

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MT. HAWLEY INSURANCE)
COMPANY,)
)
Plaintiff,)
)
vs.) No. 1:22-cv-10354
)
BEACH CRUISER, LLC)
and FLYWAY)
MANAGEMENT, LLC,)
)
Defendants.)
)
and)
)
NATIONWIDE GENERAL)
INSURANCE COMPANY,)
)
Intervenor Defendant.)

The deposition via Zoom of
MT. HAWLEY INSURANCE COMPANY called by
the Defendant for examination, taken
pursuant to notice and pursuant to the
Federal Rules of Civil Procedure for the
United States District Courts pertaining
to the taking of depositions, taken
before Alyssa N. Kuipers, Certified
Shorthand Reporter, Registered
Professional Reporter, commencing at
10:09 a.m. on the 15th day of
December, 2023.

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 28 Insurance Company.
 29
 30 * * * * *

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1 (Witness sworn.)
 2 WHEREUPON:
 3 MT. HAWLEY INSURANCE COMPANY,
 4 called as a witness herein, having been
 5 first duly sworn, was examined and
 6 testified as follows:
 7 DIRECT EXAMINATION
 8 BY MR. KATZENMEIER:
 9 Q. Well, good morning,
 10 Mr. Brownell. My name is Lucas
 11 Katzenmeier. I'm an attorney with Riker
 12 Danzig. We represent Nationwide General
 13 Insurance Company in this matter,
 14 intervener defendant.
 15 Before we get started on the
 16 deposition proper, I'm going to give you
 17 some ground rules. First, you just took
 18 an oath. That means you're required to
 19 tell the truth in this deposition. Do
 20 you understand that?
 21 A. Yes.
 22 Q. Okay. And as you're aware,
 23 we have a court reporter with us, who is
 24 taking down everything we say, because of
 25 that and especially because this

1 deposition is virtual, your responses
 2 need to be verbal. You have to say yes,
 3 no, or otherwise verbalize your response
 4 to a question. That means you can't just
 5 shake your head no. Do you understand
 6 that?

7 A. Yes, I do.

8 Q. Okay. Second, because we
 9 need a clean transcript, we have to avoid
 10 talking over each other, so when I ask a
 11 question, please let me finish my
 12 question before you start answering. And
 13 when you answer, I will try to let you
 14 finish your answer before I ask another
 15 question. Is that okay?

16 A. Yes.

17 Q. Okay. When we're going
 18 through these and you're responding to my
 19 questions, I don't want you to guess in
 20 your answers. If you don't know the
 21 answer to the question, you can say that.
 22 If you can give me an approximation of
 23 something, that's okay. Just tell me
 24 you're approximating, but don't guess.
 25 Do you understand that?

1 A. Yes.
 2 **Q. Okay. Perfect. I'm not**
 3 here to trick you when we're doing this.
 4 **If you don't understand a question I'm**
 5 **asking, please ask for clarification. If**
 6 **you answer my question without asking for**
 7 **clarification, I'll assume you heard my**
 8 **question and you understood it.**

9 **With that said, during the**
 10 **course of this deposition, your attorney,**
 11 **Mr. Delahunt, may object to a question.**
 12 **After your attorney has voiced his**
 13 **objection, pause. You can answer the**
 14 **question unless your attorney instructs**
 15 **you not to, though.**

16 **If you need a break for any**
 17 **reason, just please let me know. I'm**
 18 **amenable to that. All I ask is, if**
 19 **there's a question pending at the time**
 20 **you request to take a break, the question**
 21 **is answered before we leave. Is that**
 22 **okay for you?**

23 A. Yes.

24 **Q. Okay. And, lastly, you**
 25 **shouldn't be communicating with anyone**

1 **else during the course of the deposition.**
 2 **I mean like taking phone calls, texting,**
 3 **anything like that, e-mails. Do you have**
 4 **a phone on you right now?**

5 A. I have a personal cell phone
 6 that's on the table in the sleep mode
 7 just for family emergency purposes.

8 **Q. Okay. Perfect. So, yeah.**
 9 **As long as you understand that, we should**
 10 **be fine. Okay.**

11 MR. DELAHUNT: I'm sorry. I
 12 just want to test if you can hear
 13 me on Kevin's microphone.

14 MR. KATZENMEIER: It's a
 15 little faint, but yes.

16 MR. DELAHUNT: Okay. All
 17 right. If I need to talk, I will
 18 speak up. Alyssa, can you hear me
 19 sufficiently?

20 THE COURT REPORTER: Yes, I
 21 can hear you.

22 BY MR. KATZENMEIER:

23 **Q. Okay. So, Mr. Brownell,**
 24 **have you taken any medications today that**
 25 **could affect your ability to provide**

1 **truthful testimony?**

2 A. No.

3 **Q. Do you have any health**
 4 **problems that could affect your ability**
 5 **to provide truthful testimony?**

6 A. No.

7 **Q. Okay. Have you ever had a**
 8 **deposition taken before?**

9 A. Yes.

10 **Q. Okay. How many times, would**
 11 **you say?**

12 A. Roughly a half dozen.

13 **Q. A half dozen. Okay. And**
 14 **have those all been within the past**
 15 **couple years, within the past year?**

16 A. Within the past 10 to

17 15 years total.

18 **Q. 10 to 15 years. Okay. And**
 19 **for what reason was your deposition taken**
 20 **previously?**

21 A. With respect to my current
 22 or former jobs.

23 **Q. Okay. So we will -- we'll**
 24 **get into that in a second.**

25 **Have you ever provided**

1 **testimony at a trial before?**

2 A. No.

3 **Q. Okay. Did you review any**
 4 **documents to refresh your recollection**
 5 **prior to this deposition?**

6 A. I did review documents, but
 7 not for that purpose.

8 **Q. Okay. For what purpose did**
 9 **you review documents prior to this**
 10 **deposition?**

11 A. To prepare for this
 12 deposition.

13 **Q. To prepare for this**
 14 **deposition. Okay. What documents were**
 15 **those?**

16 A. All of them were documents
 17 that had been produced as part of
 18 Mt. Hawley's document production in this
 19 lawsuit.

20 **Q. Okay. Did you review any**
 21 **pleadings prior to this deposition?**

22 A. Not specifically.

23 **Q. Okay. By which I mean, for**
 24 **example, Mt. Hawley's declaratory**
 25 **judgment complaint in this action.**

10

11

1 A. I may have seen that at some
 2 point, but I don't have a specific
 3 recollection of doing so. I did not
 4 review the complaint in preparation for
 5 this deposition.

6 **Q. Okay. Thank you very much.**
 7 **Just so we have it going back, can you**
 8 **please state your full name.**

9 A. Kevin Brownell, B R O W N E
 10 L L.

11 **Q. Okay. And your age for me,**
 12 **please?**

13 A. 49.

14 **Q. Thank you, sir. So you**
 15 **mentioned you have been deposed in**
 16 **connection with your current position and**
 17 **prior positions. What is your current --**
 18 **who is your current employer?**

19 A. RLI.

20 **Q. RLI. And is that -- that's**
 21 **an insurance company?**

22 A. Yes.

23 **Q. Or is that a holding**
 24 **company?**

25 A. It is both an insurer

1 itself, and also it is the parent company
 2 of Mt. Hawley Insurance Company.

3 **Q. Okay. So is Mt. Hawley a**
 4 **wholly-owned subsidiary of RLI?**

5 A. Yes.

6 **Q. How long have you been at**
 7 **RLI?**

8 A. Since August of 2018.

9 **Q. August 2018. Okay. And**
 10 **what is your current position at RLI?**

11 A. Assistant Vice-President,
 12 Claims.

13 **Q. Okay. How long have you**
 14 **been in that position?**

15 A. Since March 2023.

16 **Q. March 2023. And what do you**
 17 **do as Assistant Vice-President of Claims?**

18 A. I manage and run the
 19 casualty, general liability claims team
 20 for the Central and South regions.

21 **Q. Okay. And let's dig into**
 22 **that a little bit.**

23 **As far as managing and**
 24 **running claims, what does that entail?**

25 A. I oversee the claims

12

13

1 examiners that handle commercial general
 2 liability claims, casualty claims in the
 3 Central and South regions of the United
 4 States.

5 **Q. Okay. And when you say**
 6 **"Central and South regions of the United**
 7 **States," would that include areas like**
 8 **South Carolina?**

9 A. South Carolina is part of my
 10 territory, yes.

11 **Q. Okay. Sounds good.**

12 **Prior to this position, what**
 13 **position did you hold in RLI or**
 14 **elsewhere?**

15 A. Claims Director.

16 **Q. Claims Director. Was that**
 17 **at RLI?**

18 A. Yes.

19 **Q. Okay. And when were you the**
 20 **Claims Director at RLI?**

21 A. I had that title from the
 22 beginning of my employment at RLI through
 23 March of 2023.

24 **Q. Okay. And when did you**
 25 **begin your employment at RLI?**

1 A. August of 2018.

2 **Q. August 2018. Okay. What**
 3 **was your position before taking the**
 4 **position at RLI?**

5 A. I had a claim examiner
 6 position at a company called Starr
 7 Indemnity.

8 **Q. And when did you leave that**
 9 **position?**

10 A. When I came to RLI.

11 **Q. Okay. And when did you**
 12 **start that position?**

13 A. I don't remember the exact
 14 date, but it was in 2014.

15 **Q. 2014. Okay. And what were**
 16 **your job responsibilities at Starr?**

17 A. I was a claims examiner.

18 **Q. Claims examiner. Okay.**
 19 **Mr. Brownell, could you tell me the**
 20 **highest level of education you have?**

21 A. I have a law degree.

22 **Q. A law degree. Okay. And**
 23 **where did you obtain the law degree?**

24 A. University of Illinois at
 25 Urbana-Champaign.

1 **Q. Okay. And what year was**
 2 **that?**
 3 A. 2000.
 4 **Q. 2000. Okay. And did you**
 5 **have an undergrad somewhere else or ...**
 6 A. I have an undergraduate
 7 degree in media studies from the same
 8 institution.
 9 **Q. Okay. And when did you**
 10 **obtain that degree?**
 11 A. 1997.
 12 **Q. '97. Okay. All right. So**
 13 **are you familiar with the declaratory**
 14 **judgment action filed by**
 15 **Mt. Hawley?**
 16 A. Yes.
 17 **Q. Okay. Are you familiar with**
 18 **the claims that are asserted in that**
 19 **declaratory judgment action?**
 20 A. Yes.
 21 **Q. So if you could, in your**
 22 **words, just what is your understanding of**
 23 **the claims asserted by Mt. Hawley in that**
 24 **complaint?**
 25 A. I would say, generally, the

1 complaint speaks for itself, but my
 2 understanding of the complaint is that we
 3 are seeking a declaration that there's no
 4 coverage under the Mt. Hawley policy at
 5 issue for the claims asserted against the
 6 defendants in the underlying lawsuit.

7 **Q. Okay. So whose decision was**
 8 **it to file a declaratory judgment action**
 9 **within Mt. Hawley?**

10 A. That would have been made by
 11 claim counsel.

12 **Q. Claim counsel. Okay. But**
 13 **if there was -- So was there anyone in**
 14 **Mt. Hawley who, administratively, it was**
 15 **their decision?**

16 A. I'm not sure what you mean
 17 by "administratively."

18 **Q. So, for example -- to be**
 19 **clear, I'm not asking anything your**
 20 **counsel told you or any recommendation**
 21 **made to you. I'm purely asking about**
 22 **procedure here.**

23 **So if a recommendation was**
 24 **made for litigation, who would have been**
 25 **the one saying yes or no?**

1 A. It would have been our Claim
 2 Counsel Unit.
 3 **Q. Claim Counsel Unit. Okay.**
 4 **And do you have any idea -- or do you**
 5 **know who it would have been with respect**
 6 **to this declaratory judgment action in**
 7 **particular?**
 8 A. The claim counsel attorney
 9 that works with my unit, her name is Dana
 10 Kanellakes.
 11 **Q. When was the decision made**
 12 **to file the declaratory judgement action?**
 13 MR. PIERANTONI: Can you
 14 spell that last name for me? I'm
 15 sorry.
 16 THE WITNESS:
 17 K A N E L L A K E S.
 18 BY MR. KATZENMEIER:
 19 **Q. Okay. I'm sorry,**
 20 **Mr. Brownell. I don't know if you got my**
 21 **last question. I can ask it again, if**
 22 **not.**
 23 A. Please ask it again.
 24 **Q. Do you know when the**
 25 **decision was made to file a declaratory**

1 **judgment action in this case?**

2 A. I don't know the exact date,
 3 but it would have been shortly before the
 4 complaint was filed.

5 **Q. Okay. Thank you. So would**
 6 **it be fair to say that the complaint in**
 7 **this case touches on an application for**
 8 **insurance submitted by Beach Cruiser?**

9 A. Yes.

10 **Q. Okay. Are you familiar with**
 11 **that application?**

12 A. Yes.

13 **Q. Okay. Have you reviewed**
 14 **that application for insurance?**

15 A. Yes.

16 **Q. Okay. I am going to go**
 17 **ahead and pull that application up on my**
 18 **screen, just so we have a point of**
 19 **reference while we're talking about it.**

20 **Okay. Mr. Brownell, can you**
 21 **see my screen?**

22 A. Yes.

23 MR. KATZENMEIER: Can
 24 everybody else see my screen?

25 Okay. Let's go ahead and mark

18

19

1 this as Nationwide Exhibit A. And
 2 just so everyone's aware, this is
 3 the entire conversation thread.
 4 The application is an attachment
 5 to this e-mail.
 6 (Nationwide Deposition Exhibit A
 7 marked for identification.)

8 BY MR. KATZENMEIER:

9 Q. Okay. Mr. Brownell, do you
 10 recognize this document?

11 A. Yes.

12 Q. Okay. Can you tell me what
 13 this document is?

14 A. This is the supplemental
 15 application submitted by Beach Cruiser
 16 for coverage with Mt. Hawley.

17 Q. And is this the document you
 18 mentioned reviewing prior to this
 19 deposition?

20 A. It's one of them.

21 Q. I will -- so this is -- This
 22 would be part of the application
 23 submitted by Beach Cruiser; is that fair
 24 to say?

25 A. This is the supplemental

1 application, and there's also a basic
 2 application.

3 Q. Right. Okay. So let me
 4 scroll down a bit.

5 Is this the other part of
 6 the application?

7 A. It looks like it, yes.

8 Q. The basic application.

9 Okay. So I will scroll back up here for
 10 you.

11 You mentioned that
 12 Mt. Hawley's claims in this action
 13 involve some alleged misrepresentations
 14 in Beach Cruiser's application for
 15 insurance. Can you tell me specifically
 16 what misrepresentation or alleged
 17 misrepresentation you may be referring
 18 to?

19 A. Yes. It's the second
 20 question listed under No. 3: Are any
 21 properties rented by the day or by the
 22 week?

23 Q. Okay. And is it correct
 24 that this -- that checkmark next to that
 25 question is marked no, correct?

20

21

1 A. That's correct.

2 Q. Is that what you're alleging
 3 is a misrepresentation in this case?

4 A. Yes.

5 Q. Okay. Are there any other
 6 aspects of this supplemental application
 7 that you consider to be a
 8 misrepresentation?

9 A. No.

10 Q. Okay. Let's scroll back
 11 down to the -- This is the second page.
 12 Is there any aspect on the second page of
 13 this supplemental dwelling application
 14 that you would consider to be a
 15 misrepresentation?

16 A. Not to my knowledge, no.

17 Q. Okay. And we're going to go
 18 through the same question with the basic
 19 application, as you termed it. Is there
 20 any information on this page of the basic
 21 application that you would consider to be
 22 a misrepresentation?

23 A. Not to my knowledge, no.

24 Q. Okay. And it looks like
 25 everything is blank on the rest of this

1 except for the address list. Do you see
 2 -- Are you familiar with the allegations
 3 asserted in the underlying action?

4 A. Yes.

5 Q. Okay. Are you familiar with
 6 the address to the property in question
 7 involved in the underlying action?

8 A. I reviewed it in preparation
 9 for this deposition, but I don't remember
 10 which one of them, as I sit here right
 11 now, is the one we're talking about.

12 Q. Okay. That sounds good to
 13 me.

14 MR. DELAHUNT: Luke, if you
 15 want to represent which property
 16 is at issue, so we can -- you
 17 know, I don't have any problem
 18 with that.

19 MR. KATZENMEIER: I mean,
 20 yeah. I'm fine with that. I just
 21 didn't want to put words in his
 22 mouth.

23 MR. DELAHUNT: I understand.
 24 BY MR. KATZENMEIER:

25 Q. So, I mean, I guess, along

1 those lines, Mr. Brownell -- your names
 2 being switched is getting to me.
 3

4 **Mr. Brownell, would it be --**
 5 **would it sound correct that 146 President**
 6 **Street is the property in question in**
 7 **this case?**

8 A. I have no reason to dispute
 9 that.

10 Q. Okay. Thank you. So
 11 scrolling back up a little bit, we've --
 12 you've singled out the "are properties
 13 rented by the day or by the week" as the
 14 point of the alleged misrepresentation.
 15 **What is your basis for asserting that**
 16 **that was incorrect?**

17 A. Well, the property that is
 18 the subject of the underlying lawsuit was
 19 -- prior to this policy and at the time
 20 of the alleged loss, was being used as an
 21 Airbnb or Vrbo property.

22 Q. Okay. And when did
 23 Mt. Hawley become aware of this?

24 A. David Hoffman, who was the
 25 claims examiner assigned to this, learned
 that information during his investigation

1 of the claim. And I believe that the
 2 final confirmation that this property was
 3 an Airbnb and Vrbo property and had been
 4 prior to any coverage with Mt. Hawley,
 5 that final determination was -- the final
 6 conclusion was come to in, I want to say,
 7 September 2nd of 2022, I believe is the
 8 date.

9 Q. You say the "final
 10 confirmation." Was there an initial
 11 conclusion or suspicion?

12 A. He learned earlier during
 13 his investigation process that, at time
 14 of this loss, the property was rented
 15 through Airbnb and Vrbo. When I say
 16 "final," I'm referring to the fact that
 17 he then confirmed it had been rented out
 18 through Airbnb and Vrbo for several years
 19 prior to Mt. Hawley's coverage.

20 Q. Okay. And we'll dig into
 21 that a little bit, but have you discussed
 22 this matter with Mr. Hoffman, I think you
 23 said?

24 A. I have not.

25 Q. You have not. Okay. How

1 **did Mr. Hoffman first become aware prior**
 2 **to the final confirmation as you said? I**
 3 **guess, what was the first point that**
 4 **raised the suspicion?**

5 A. The answer to that question
 6 will be found in the claim file notes
 7 that were produced in litigation, but
 8 it's my understanding, from those claim
 9 notes, that Mr. Hoffman most likely
 10 gleaned that information during a phone
 11 call with the insured.

12 Q. Okay. And when you say
 13 final confirmation was reached in
 14 September 2022, I believe you mentioned,
 15 what form did this final confirmation
 16 take?

17 A. The last piece of
 18 information to make that determination
 19 was information from the insured stating
 20 that the property had been an Airbnb and
 21 Vrbo property for several years prior to
 22 Mt. Hawley's coverage. The claim file
 23 notes will reflect in what form that
 24 information came in. Whether it was a
 25 phone call or e-mail, I don't recall, but

1 that's in the claim file notes.

2 Q. Okay. When did Mt. Hawley
 3 receive the claim from Beach Cruiser in
 4 this case?

5 A. Well, the claim didn't come
 6 in from Beach Cruiser. The claim was
 7 submitted by Beach Cruiser's retail
 8 agent.

9 Q. And who is that?

10 A. I don't recall the name of
 11 their retail agent.

12 Q. Okay. Does the name USI
 13 sound correct?

14 A. Yes. That refreshes my
 15 recollection. I believe it's USI.

16 Q. Okay. Thank you,
 17 Mr. Brownell.

18 So having reached that
 19 recollection, do you recall when
 20 Mt. Hawley would have received notice of
 21 the claim from USI?

22 A. No, but the claim file would
 23 document that.

24 Q. Okay. Let me pull up some
 25 other documents just to see if this

1 refreshes our memory.
 2

3 **Okay. Mr. Brownell, can you**
 4 **see my screen?**

5 A. Yes.

6 **Q. Okay. So what I have up for**
 7 **you is an e-mail right now. It appears**
 8 **to be from David Hoffman. Does that look**
 9 **correct?**

10 A. Yes.

11 **Q. Okay. And it appears to be**
 12 **sent to Drew Augustine. Do you know who**
 13 **Drew Augustine is?**

14 A. It's my understanding he's
 15 the property manager for this property
 16 with Beach Cruiser.

17 **Q. And it looks like it also**
 18 **went to someone at Flyway; is that**
 19 **correct?**

20 A. Yes.

21 **Q. Okay. So I guess, just**
 22 **reading the first paragraph, the first**
 23 **sentence -- you can either read it**
 24 **yourself or I can read it out loud into**
 25 **the record.**

 A. I can read it myself.

1 **Q. Okay. Would it be correct**
 2 **to say that that first sentence confirms**
 3 **the rental units at 146 President Street**
 4 **were rented out both in Airbnb and Vrbo?**

5 A. Yes. This appears to be
 6 Mr. Hoffman's e-mail summary of portions
 7 of the phone call he had earlier that
 8 day.

9 **Q. Okay. And the date of this**
 10 **e-mail is August 17th, 2022, correct?**

11 A. Yes.

12 **Q. Would this be the final**
 13 **confirmation that you referred to**
 14 **earlier?**

15 A. No.

16 **Q. No? Would the final**
 17 **confirmation have taken the form of an**
 18 **e-mail to Beach Cruiser or Flyway?**

19 A. I would have to refer to the
 20 claim notes to answer that question.

21 **Q. Okay. I'll stop sharing.**
 22 **And before we get too far away from that,**
 23 **let's mark that as Nationwide Exhibit B.**
 24 **Okay. So I'm going to -- I think I can**
 25 **share my screen here again. All right.**

1 **Mr. Brownell, can you see my screen?**
 2 **(Nationwide Deposition Exhibit B**
 3 **marked for identification.)**

4 BY THE WITNESS:

5 A. Yes.

6 **Q. Thank you. We're back on**
 7 **the supplemental dwelling application,**
 8 **correct?**

9 A. Yes.

10 **Q. Okay. So I just want you to**
 11 **take me through the process of this**
 12 **supplemental dwelling application and**
 13 **also the basic application. So once --**
 14 **Putting aside the -- whether there was a**
 15 **misrepresentation or not, in the normal**
 16 **course of events, the insured fills this**
 17 **out. Who does it go to?**

18 MR. DELAHUNT: I'm going to
 19 object to the extent that that
 20 assumes the insured fills out the
 21 application. That hasn't been put
 22 into evidence yet.

23 BY THE WITNESS:

24 A. It depends on which product
 25 we're talking about. The product at

1 issue here is what we call general
 2 binding authority, or GBA for short.
 3 Within GBA, the process is that the
 4 managing general agent, which in this
 5 case is Bass, would obtain a completed
 6 application and supplemental application
 7 from the retail agent.

8 **Q. Okay. And who drafted the**
 9 **dwelling supplemental application?**

10 A. This particular supplemental
 11 application was actually prepared by a
 12 different insurance company, RSUI.

13 **Q. Okay. Is this dwelling**
 14 **application drafted by RSUI used by**
 15 **Mt. Hawley?**

16 A. Not specifically. However,
 17 it's not uncommon for Mt. Hawley to
 18 accept supplemental applications on
 19 another insurance company's form provided
 20 that it asks the same information or
 21 similar information that we would ask.

22 **Q. Okay. So, I guess, put**
 23 **another way: This isn't the standard**
 24 **dwelling application used by**
 25 **Mt. Hawley; would that be fair?**

1 A. That's fair.
 2 **Q. Okay. So assuming -- once**
 3 **this -- assuming it's been filled out by**
 4 **the insured, once a supplemental dwelling**
 5 **application is submitted by an insurance**
 6 **retail agent, who does it go to?**
 7 A. For this product, it goes to
 8 the MGA, which is Bass.
 9 **Q. And you said the MGA. Can**
 10 **you tell me what that means?**
 11 A. Managing general agent.
 12 **Q. Okay. And you said that was**
 13 **Bass?**
 14 A. Bass Underwriters, yes.
 15 **Q. Bass Underwriters. Okay.**
 16 **And is Bass Underwriters the MGA for**
 17 **Mt. Hawley?**
 18 A. It's one of several.
 19 **Q. It's one of several. Is**
 20 **Bass Underwriters owned by Mt. Hawley?**
 21 A. No.
 22 **Q. Okay. As far as you know,**
 23 **does Bass Underwriters underwrite for**
 24 **companies other than Mt. Hawley?**
 25 A. I believe that they do.

1 **Q. Okay. And for this type of**
 2 **product insurance -- or for this type of**
 3 **insurance product, does Mt. Hawley use**
 4 **other underwriting companies aside from**
 5 **Bass Underwriters?**

6 A. Yes. At present, the GBA
 7 product, I believe, has nine different
 8 MGAs that they work with.

9 **Q. How about at the time this**
 10 **Mt. Hawley policy was issued? Do you**
 11 **know?**

12 A. I don't know for sure. At
 13 the time this product began, there were
 14 about four to five MGAs that they used
 15 and there are nine now, so it would be
 16 somewhere in between there.

17 **Q. So building on that, once**
 18 **this application has reached Bass, what**
 19 **would Bass do with the application?**

20 A. Bass has a set of
 21 underwriting guidelines that they have to
 22 follow when they are reviewing an
 23 application to determine whether a policy
 24 can be issued. And I'm speaking
 25 generally right now.

1 **Q. Of course.**
 2 A. If the application --
 3 information submitted with the
 4 application falls within the guidelines,
 5 Bass is authorized to issue a policy.
 6 There are certain times where the
 7 guidelines require that, depending on the
 8 answers to certain questions in the
 9 applications, Bass has to refer or submit
 10 the application into a Mt. Hawley
 11 underwriter for review before they can --
 12 before a policy can be issued.
 13 **Q. Okay. And you mentioned the**
 14 **underwriting guidelines. We'll dig into**
 15 **that, but I'm going to pull them up, just**
 16 **so we have them for reference while we're**
 17 **discussing it.**
 18 Okay. Mr. Brownell, can you
 19 see my screen?
 20 A. Yes.
 21 **Q. Okay. Can we mark this as**
 22 **Nationwide Exhibit C.**
 23 **Mr. Brownell, does this look**
 24 **like the underwriting guidelines you were**
 25 **just referring to?**

1 **(Nationwide Deposition Exhibit C**
 2 **marked for identification.)**

3 BY THE WITNESS:

4 A. For rental dwellings, yes.

5 **Q. Okay. So are there other**
 6 **underwriting guidelines that are provided**
 7 **by Mt. Hawley to Bass?**

8 A. For different classes of
 9 insureds, yes.

10 **Q. Would this have been the**
 11 **underwriting guidelines provided to Bass**
 12 **for the Mt. Hawley policy for the --**
 13 **Sorry. Let me strike that and clarify**
 14 **because I can see how that was a little**
 15 **confusing.**

16 **Would this have been the**
 17 **underwriting guidelines to be used in**
 18 **connection with the Mt. Hawley policy**
 19 **issued to Beach Cruiser in this case?**

20 A. Yes.

21 **Q. So you mentioned referrals a**
 22 **short while ago. I'm reading this**
 23 **sentence here. I don't know if you can**
 24 **see my cursor.**

25 A. Yes, I can.

1 **Q. It says short-term rentals
2 less than 12 months and vacation rentals
3 should be referred. Can you tell me what
4 "referred" means in this sentence?**

5 A. That's what I indicated
6 earlier, that if the application
7 indicated that there was a short-term
8 rental or a vacation rental for the
9 property for which coverage was being
10 sought, Bass would have to refer that
11 application into a Mt. Hawley underwriter
12 for review.

13 **Q. Okay. So assuming --
14 hypothetically, if there were no issues
15 or incorrect information relayed in an
16 application, you mentioned Bass has the
17 authority to issue a policy on behalf of
18 Mt. Hawley; is that correct?**

19 A. As long as the risk falls
20 within the underwriting guidelines and
21 there are no facts which require a
22 referral per those guidelines, yes.

23 **Q. So is Bass the entity that
24 would be responsible for comparing the
25 application to the underwriting**

1 **guidelines?**
2 A. Initially, yes.
3 **Q. Okay. So you say
4 "initially, yes." After Bass, who would
5 it be?**

6 A. It would be Mt. Hawley if it
7 was a matter that had been referred.

8 **Q. Okay. But only if it had
9 been referred?**

10 A. Correct.

11 **Q. So if Bass determined that
12 the application fell within the
13 underwriting guidelines without need for
14 referral, Bass would have the authority
15 to issue a policy on behalf of
16 Mt. Hawley; is that correct?**

17 A. Yes.

18 **Q. Okay. So, for example, in
19 the Mt. Hawley -- Sorry. Strike that.**

20 **In the application that was
21 attached to Mt. Hawley's DJ complaint in
22 this case, which I showed you earlier, if
23 the application had marked yes instead
24 under short-term rentals, is that a
25 situation in which the application should**

1 **have been referred to Mt. Hawley?**

2 A. Yes.

3 **Q. Okay. How often does
4 Mt. Hawley deal with Bass or communicate
5 with Bass during the underwriting
6 process?**

7 A. It depends on whether the
8 application is referred or not.

9 **Q. Okay. Does Bass communicate
10 with Mt. Hawley in the process of
11 renewing a policy?**

12 A. I think the answer remains
13 the same. It depends on if there's a
14 reason for referral.

15 **Q. Okay. So in the event that
16 Bass determines that no referral is
17 necessary, what is the process for
18 issuing a policy on behalf of Mt. Hawley
19 in that event?**

20 A. I'm not sure what you mean
21 by process of issuing a policy. If Bass
22 concludes that there is no reason for
23 referral and the risk otherwise falls
24 within the underwriting guidelines, they
25 may issue a policy to that insured.

1 **Q. Okay. And is there any sort
2 of communication sent by Bass to
3 Mt. Hawley when such a policy had been
4 issued?**

5 A. I know that the policy is
6 communicated back to Mt. Hawley, but I'm
7 not exactly sure the form that that
8 takes.

9 **Q. Okay. I mean, so is there
10 any form of, I guess, confirmation sent
11 from Bass to Mt. Hawley that a policy has
12 been issued on Mt. Hawley's behalf?**

13 A. Bass provides a copy of the
14 issued policy to Mt. Hawley.

15 **Q. Okay. And what does
16 Mt. Hawley do with those policies, if
17 anything?**

18 A. Nothing. They're stored
19 electronically.

20 **Q. Okay. As far as you are
21 aware, is there any sort of review
22 process Bass undergoes with respect to
23 the information contained on an
24 application for insurance?**

25 A. I'm not sure I understand

1 that question.

2 **Q. Put another way: If Bass**
 3 **receives an application for insurance, is**
 4 **there any steps taken to verify the**
 5 **information in an application?**

6 A. I would say not typically.
 7 Bass relies on the representations that
 8 are made by the applicants who are
 9 filling out the application forms.

10 **Q. Okay. Does Mt. Hawley**
 11 **impose any requirements on Bass to verify**
 12 **the information in insurance**
 13 **applications?**

14 A. Not to my knowledge.

15 **Q. Okay. Would there have been**
 16 **any steps taken to verify any of the**
 17 **information contained in any application**
 18 **for insurance submitted by Beach Cruiser**
 19 **in this case?**

20 A. If you mean did Bass
 21 undertake any efforts to confirm the
 22 accuracy of the application responses,
 23 I'm not aware of any.

24 **Q. Okay. So in the event that**
 25 **a referral is necessary to Mt. Hawley,**

1 **what is the process for reviewing the**
 2 **application that Mt. Hawley -- that has**
 3 **been referred to Mt. Hawley?**

4 A. Mt. Hawley will receive the
 5 application documents from Bass, and then
 6 Mt. Hawley will direct Bass to ask
 7 further questions pertaining to the
 8 issues that led to the referral.

9 **Q. Okay. So in this case,**
 10 **let's assume that the short-term rental**
 11 **question on the application had been**
 12 **marked yes. What follow-up questions, if**
 13 **any, would Mt. Hawley have had?**

14 A. There may have been several
 15 follow-up questions, but among them would
 16 definitely have been a question about
 17 whether the property was rented through
 18 Airbnb, Vrbo, or a similar service.

19 **Q. And I pointed to the**
 20 **supplemental dwelling application**
 21 **earlier. Does Mt. Hawley have its own**
 22 **standard form dwelling application?**

23 A. Supplemental application,
 24 yes.

25 **Q. And is that information**

1 **regarding Airbnb, Vrbo, is that on**
 2 **Mt. Hawley's own supplemental**
 3 **application?**

4 A. I haven't reviewed that
 5 application, but it is my understanding
 6 that there is a question or questions on
 7 it that would be substantially similar to
 8 the one on the RSUI supplemental
 9 application.

10 **Q. Okay. And when you say**
 11 **"substantially similar to the one on the**
 12 **RSUI," do you -- are you saying it would**
 13 **say short-term rentals or it would**
 14 **specifically mention Airbnb, Vrbo, and**
 15 **other service?**

16 A. Not having reviewed the
 17 Mt. Hawley version of the supplemental
 18 application for rental dwellings, I can't
 19 answer that question as I sit here, but
 20 it is my understanding that it has a
 21 question designed to elicit the type of
 22 information we've been talking about with
 23 respect to short-term rentals.

24 **Q. Okay. Let me return to the**
 25 **underwriting guidelines we have here.**

1 **You can still see these on my screen,**
 2 **correct?**

3 A. Yes.

4 **Q. Okay. Thank you. Do you**
 5 **know when these underwriting guidelines**
 6 **were first promulgated by Mt. Hawley?**

7 A. I believe in 2016.

8 **Q. 2016. And how often, if**
 9 **regularly, are they updated?**

10 A. I don't know how often or
 11 regularly or if they are updated
 12 regularly. I know, over time, changes
 13 have been made to these guidelines
 14 generally, but it's my understanding that
 15 the guidelines pertaining to short-term
 16 rentals, Airbnb, Vrbo, have remained
 17 unchanged since 2016.

18 **Q. Okay. And who is it or what**
 19 **department is it within Mt. Hawley that**
 20 **updates these underwriting guidelines?**

21 A. The GBA underwriters.

22 **Q. Can you explain for me what**
 23 **the GBA underwriters are?**

24 A. They are underwriters who
 25 work for the GBA product.

1 **Q. Okay. And I'm scrolling**
 2 **down -- It looks like, at the bottom of**
 3 **this, this says version or V11/01/2020.**
 4 **Would that be the date that this**
 5 **particular iteration of the underwriting**
 6 **guidelines was promulgated?**

7 A. It appears so, but I'm not
 8 -- I don't know, but that appears to be
 9 the case.

10 **Q. Okay. How are Mt. Hawley's**
 11 **underwriting guidelines provided to Bass?**

12 A. Do you mean in what medium
 13 they're transmitted?

14 **Q. Yeah.**

15 A. I don't know.

16 **Q. Okay. Fair to say either**
 17 **e-mail or physical mail?**

18 A. It would have to be. I know
 19 that they have them.

20 **Q. Okay. So I'm going to**
 21 **scroll down in this. Looking at the**
 22 **underwriting guidelines, the Airbnb,**
 23 **Vrbo, and other similar online rental**
 24 **operations are listed under ineligible**
 25 **risks, as you mentioned; is that correct?**

1 **A. Yes.**

2 **Q. What is the reason for the**
 3 **inclusion of Airbnb, Vrbo, and similar**
 4 **rental operations as ineligible risks?**

5 A. It's fairly standard in the
 6 insurance industry that Airbnb, Vrbo, and
 7 other similar types of rentals are very
 8 short-term rentals with high turnover and
 9 occupants and unfamiliarity with the
 10 properties, which increases the risk of
 11 loss.

12 **Q. Are all short-term rentals**
 13 **ineligible risks?**

14 A. No.

15 **Q. In what circumstances would**
 16 **short-term rentals not be ineligible?**

17 A. Well, certainly, it couldn't
 18 be an Airbnb, Vrbo, or similar operation.
 19 The rest of the answer, I would have to
 20 defer to the underwriters for GBA, but
 21 it's my understanding it's extremely rare
 22 to issue a policy to a short-term rental.
 23 And even in those rare cases, the premium
 24 is certainly larger.

25 **Q. So, in this case, did**

1 **Mt. Hawley ever receive a copy of the**
 2 **policy that was eventually issued to**
 3 **Beach Cruiser from Bass?**

4 A. Yes.

5 **Q. Yes? Was that prior to**
 6 **issuance of the policy?**

7 A. I don't know, but probably
 8 not.

9 **Q. Okay. Relatedly, was this**
 10 **-- was Beach Cruiser's application for**
 11 **insurance in this case referred to**
 12 **Mt. Hawley?**

13 A. No.

14 **Q. Okay. And the same**
 15 **questions with respect to the renewal of**
 16 **the Mt. Hawley policy issued to Beach**
 17 **Cruiser in this case. Would that have**
 18 **ever been referred to Mt. Hawley by Bass?**

19 MR. DELAHUNT: Luke, can I
 20 ask, are you referring to the
 21 renewal of the policy at issue?

22 MR. KATZENMEIER: Yes.
 23 BY THE WITNESS:

24 A. Now I'm confused because
 25 there's two renewals. There's the

1 initial policy, then a first renewal,
 2 which I believe is the policy at issue in
 3 the declaratory judgment. And then
 4 there's a second renewal in the
 5 subsequent year.

6 **Q. Okay. Let's go through both**
 7 **of them. How about it? So the first**
 8 **renewal, would it be correct to state**
 9 **that is the '21 to '22 policy period?**

10 A. Yes.

11 **Q. Okay. And would that have**
 12 **ever been referred to Mt. Hawley by Bass?**

13 A. It was not.

14 **Q. It was not. Okay. And you**
 15 **mentioned a second renewal. Is that for**
 16 **the '22 to '23 policy period?**

17 A. Yes.

18 **Q. Okay. And what date was**
 19 **that renewal issued?**

20 A. I would have to see the
 21 policy to answer that question.

22 **Q. Okay. Would that have been**
 23 **referred to Mt. Hawley by Bass?**

24 A. I don't believe that was
 25 either.

1 **Q. Okay. And for either of
2 those renewals, was there any
3 communication between Bass and Mt. Hawley
4 prior to the issuance of the renewal?**

5 A. I can't fully answer that
6 question because in my preparation for
7 this deposition, I only reviewed the
8 documents that had been produced in
9 discovery in the declaratory judgment
10 case; and the underwriting file for that
11 second renewal was not part of that
12 documentation.

13 **Q. Okay. Let's see. The
14 renewal that we just mentioned, the '22
15 to '23 policy period, is that also
16 subject to Mt. Hawley's now dismissed
17 revision claim in this case?**

18 A. I'm sorry.

19 MR. DELAHUNT: Can you read that
20 back?

21 (Record read as requested.)

22 MR. DELAHUNT: If you can
23 answer, go ahead.

24 MR. KATZENMEIER: I can
25 rephrase if not.

1 BY THE WITNESS:

2 A. I think that calls for a
3 legal conclusion.

4 MR. DELAHUNT: I don't want
5 to interfere, but I will state I
6 don't know that's a legal
7 conclusion, but it would be
8 answered by the pleading prior to
9 withdrawal of the revision claim.
10 I'm not going to answer the
11 question for the witness, but --

12 BY MR. KATZENMEIER:

13 **Q. I think I can -- Let's do it
14 another way.**

15 So I'll tell you what, I'm
16 going to stop sharing my screen on the
17 dwelling application. And I'm going to
18 pull up correspondence issued in this
19 case. Mr. Brownell, can you see my
20 screen?

21 A. Yes.

22 **Q. Okay. Are you familiar with
23 this document?**

24 A. Can I ask you to scroll
25 through it quickly to the end, please?

1 **Q. Yeah. Absolutely. Just let
2 me know if I'm going too fast or too
3 slow.**

4 A. Okay. You can jump to the
5 last page. Yes, I recognize this
6 document.

7 **Q. Okay. Can you tell me what
8 this document is?**

9 A. This was a dual purpose
10 letter sent to the insured to advise them
11 of a notice of revision of the policy
12 and, alternatively, to assert the
13 coverage defense based on the amended
14 conditions endorsement.

15 **Q. Okay. And the date of this
16 letter is November 14, 2022, correct?**

17 A. Yes.

18 **Q. And I'm looking at the
19 Mt. Hawley policy number as GGL0026067.
20 Do you understand that to be connected to
21 the '21 to '22 policy period for the
22 Mt. Hawley policy?**

23 A. According to what's there in
24 the caption of that letter, yes.

25 **Q. Okay. Thank you. So**

1 **following up on my earlier question,
2 before we get too deep into this, would
3 the 2022 to '23 renewal period you've
4 mentioned also be included in this notice
5 of revision or does it just refer to the
6 '21, '22 policy period?**

7 A. It just refers to the '21,
8 '22 policy period.

9 **Q. So as we sit here today, as
10 far as you know, is the '22 to '23 policy
11 period still in effect?**

12 A. If you mean has that policy
13 been rescinded, no, it has not.

14 **Q. Okay. Thank you, sir. Did
15 Mt. Hawley accept a premium payment for
16 the '22 to '23 policy period?**

17 A. I assume it did.

18 **Q. Did Mt. Hawley accept a
19 premium payment for the '21 to '22
20 renewal period?**

21 A. I assume it did as well.

22 **Q. Okay. Was the premium for
23 the '21 to '22 period ever returned?**

24 A. I don't believe it was. I
25 believe it was offered, and this letter

1 will refer to itself in that regard.

2 **Q. And as far as you're aware,**
3 **was that offer ever accepted?**

4 A. I don't believe it was.

5 **Q. So, speaking generally, what**
6 **is your role, if any, in issuing**
7 **insurance policies on behalf of**
8 **Mt. Hawley?**

9 A. My role individually?

10 Q. **Yeah.**

11 A. I work in the Claims
12 Department. I'm not an underwriter, so I
13 don't have any role in underwriting
14 coverage.

15 **Q. Okay. So I assume -- the**
16 **same question as far as renewing**
17 **policies. Do you have any role in**
18 **renewing policies?**

19 A. Same answer.

20 **Q. Okay. And building on that,**
21 **did you have any role in issuing or**
22 **renewing the '21 to '22 renewal period**
23 **for the Mt. Hawley policy at issue in**
24 **this case?**

25 A. Individually, no.

1 **Q. Okay. I'm going to --**
2 **Actually, I don't remember whether we**
3 **marked the November 14th letter as an**
4 **exhibit. If not, let's mark it as**
5 **Nationwide Exhibit D.**

6 **(Nationwide Deposition Exhibit D**
7 **marked for identification.)**

8 **BY MR. KATZENMEIER:**

9 **Q. Okay. I'm going to share my**
10 **screen again with you, Mr. Brownell. Can**
11 **you see my screen, Mr. Brownell?**

12 A. Yes.

13 **Q. Okay. Do you recognize this**
14 **document?**

15 A. Can you scroll to the top?

16 Q. **Sure.**

17 A. Can you scroll down until I
18 say stop?

19 Q. **Yeah. Absolutely.**

20 A. I'm just looking for a form
21 that identifies Beach Cruiser as the
22 insured.

23 **Q. Presumably, that would be in**
24 **the declarations page, correct?**

25 A. It actually refers to forms

1 below. That's why I was having you
2 scroll down to the named insured form.

3 **Q. I can continue.**

4 A. It's coming. There it is.

5 Yes. Okay. This appears to be the '21,
6 '22 policy issued to Beach Cruiser.

7 **Q. Okay. And I'm going to zoom**
8 **in just a little bit. Is that number --**
9 **The policy number at the top of the**
10 **screen, GGL0026067, is that consistent**
11 **with the policy number on the letter I**
12 **just showed you?**

13 A. I would have to see the
14 letter again to confirm, but I believe
15 that's the case, yes.

16 **Q. Okay. All right. I have it**
17 **up for you right here.**

18 A. Yes, it is.

19 **Q. Okay. So I am going to take**
20 **you down to the amended conditions**
21 **endorsement. Is this the endorsement**
22 **that is referred to in the complaint?**

23 A. Yes.

24 **Q. Okay. And this is the**
25 **endorsement that Mt. Hawley is -- well,**

1 **has asserted that Beach Cruiser has made**
2 **representations based on?**

3 A. This is the endorsement that
4 Mt. Hawley is contending precludes
5 coverage for this loss.

6 **Q. Okay. So is this a standard**
7 **endorsement in Mt. Hawley's policies?**

8 A. Yes.

9 **Q. Okay. Now when we say**
10 **"standard," does that mean all Mt. Hawley**
11 **policies contain this form?**

12 A. I know, in the GBA product,
13 this form is mandatory on all policies.
14 And for other Mt. Hawley policies that
15 are not part of the GBA product, I do
16 believe it is also mandatory on theirs as
17 well, but I know for certain that this is
18 a mandatory endorsement on all policies
19 issued by GBA -- or through the GBA
20 product.

21 **Q. Okay. And do you know how**
22 **long has this been a standard required**
23 **endorsement?**

24 A. Well, since early 2021,
25 March, I believe.

1 **Q. March 2021. Okay. And I'm**
 2 **going to -- it looks like I don't have it**
 3 **bookmarked here, but it's actually the**
 4 **next page. So I'm looking at the service**
 5 **of suit and conditions endorsement. Can**
 6 **you see that on my screen?**

7 A. Yes.

8 **Q. Okay. Under Condition 1,**
 9 **Section BB, it says: Choice of law.**

10 It says: All matters
 11 arising hereunder, including questions
 12 related to validity, interpretation,
 13 performance, and enforcement for this
 14 policy shall be determined in accordance
 15 with the law and practice of the State of
 16 New York notwithstanding New York's
 17 conflicts of law rules.

18 Did I read that correctly?

19 A. Yes.

20 **Q. Okay. Do you understand**
 21 **that to mean that New York's laws -- that**
 22 **this policy must be interpreted in**
 23 **accordance with New York's laws?**

24 A. That's a legal question,
 25 but, yes, that's my understanding.

2 **Q. Okay. Now, as far as you**
 3 **understand, would that include statutes,**
 4 **regulations?**

5 A. What statutes or
 6 regulations?

7 **Q. Just New York's statutes and**
 8 **regulations. Put another way: If there**
 9 **were states whose statutes and**
 10 **regulations applied to the interpretation**
 11 **of this policy, would it be New York's?**

12 A. I'm not sure that this
 13 endorsement makes this policy subject to
 14 any particular New York statute.

15 **Q. I guess put another way: Is**
 16 **this choice of law provision here why**
 17 **recision was issued pursuant to -- or**
 18 **recision was asserted, I'll say,**
 19 **according to New York Insurance Law 3105**
 20 **in the recision letter?**

21 A. That's a legal question, and
 22 that would have been the purview of claim
 23 counsel in conjunction with outside
 24 coverage counsel. I can't answer that
 25 question.

Q. Okay. Who was the party

56

1 **responsible for issuing the November 14th**
 2 **recision letter?**

3 A. It has two signatories,
 4 David Hoffman and Eric White.

5 **Q. Okay. And we've discussed**
 6 **Hoffman briefly, I believe. Who is Eric**
 7 **White?**

8 A. He is the head underwriter
 9 for the GBA product.

10 **Q. Okay. And have you ever**
 11 **communicated with Mr. White in connection**
 12 **with this Mt. Hawley policy?**

13 A. Yes.

14 **Q. Okay. When did you**
 15 **communicate with Mr. White in connection**
 16 **with this Mt. Hawley policy?**

17 A. Tuesday afternoon.

18 **Q. Tuesday afternoon. Is that**
 19 **the only time, or is that the last time?**

20 A. The only time. Oh. There
 21 was a five or ten-minute follow-up
 22 conversation with him yesterday
 23 afternoon.

24 **Q. Okay. And what was the**
 25 **subject of that conversation?**

1 A. Both of those conversations
 2 occurred in preparation for this
 3 deposition with Mr. Delahunt, our
 4 attorney, present.

5 **Q. Okay. Let's see here. The**
 6 **New York choice of law provision that I**
 7 **showed you earlier on the Mt. Hawley**
 8 **policy -- and if you would like me to go**
 9 **back to that, I can. Just let me know --**
 10 **is that standard in Mt. Hawley policies?**

11 A. It is now.

12 **Q. When you say "now," what do**
 13 **you mean?**

14 A. That endorsement has only
 15 existed for a few years, three to
 16 four years, so, obviously, before that,
 17 we wouldn't have been using it.

18 **Q. Okay. Did Mt. Hawley have a**
 19 **different standard choice of law prior to**
 20 **that?**

21 A. Had a different service of
 22 suit endorsement, yes.

23 **Q. Did that previous service of**
 24 **suit endorsement contain a choice of law**
 25 **provision?**

<p>1 A. I don't remember.</p> <p>2 Q. Okay. Going to -- I'm going</p> <p>3 to return to the policy. And I believe</p> <p>4 we should mark the Mt. Hawley policy for</p> <p>5 the '21 to '22 period as Nationwide</p> <p>6 Exhibit E, I think we're on now.</p> <p>7 (Nationwide Deposition Exhibit E</p> <p>8 marked for identification.)</p> <p>9 THE COURT REPORTER: Yes,</p> <p>10 we're on E.</p> <p>11 MR. KATZENMEIER: Okay.</p> <p>12 Thank you very much.</p> <p>13 BY MR. KATZENMEIER:</p> <p>14 Q. Mr. Brownell, are you</p> <p>15 familiar with the terms and endorsements</p> <p>16 of this particular policy?</p> <p>17 A. Generally, yes.</p> <p>18 Q. Okay. As far as you are</p> <p>19 aware, is there a -- any exclusion or</p> <p>20 endorsement to the policy specifically</p> <p>21 referring to Airbnb or Vrbo?</p> <p>22 A. I don't think those terms</p> <p>23 are referenced by name in the policy, no.</p> <p>24 Q. How about any similar</p> <p>25 short-term rental service specifically or</p>	<p>1 generically?</p> <p>2 A. No.</p> <p>3 Q. Why is that? Why would</p> <p>4 there not be any such exclusion or</p> <p>5 endorsement?</p> <p>6 A. There wouldn't need to be.</p> <p>7 It would have been handled during the</p> <p>8 underwriting process.</p> <p>9 Q. Okay. Would that have --</p> <p>10 Strike that.</p> <p>11 Okay. So I'm looking at the</p> <p>12 November 14th letter noticing the</p> <p>13 revision of the Mt. Hawley policy. This</p> <p>14 is Nationwide Exhibit D. What led to the</p> <p>15 decision to issue this revision letter?</p> <p>16 A. Generally speaking, it would</p> <p>17 have been the sum and substance of David</p> <p>18 Hoffman's coverage investigation and most</p> <p>19 likely consultation with claim counsel.</p> <p>20 Q. Okay. And is there a reason</p> <p>21 that this letter was not issued until</p> <p>22 November 14th when, as you said, final</p> <p>23 confirmation of the use of the property</p> <p>24 took place in September?</p> <p>25 MR. DELAHUNT: Object to the</p>
<p>60</p>	<p>61</p>
	<p>1 date this particular letter was drafted</p> <p>2 on, which I assume would have been</p> <p>3 shortly before November 14th, 2022.</p>
	<p>4 MR. KATZENMEIER: Okay.</p>
	<p>5 Let's see. I have some more, but</p>
	<p>6 this might be a good time to take</p>
	<p>7 a break since we're at an hour and</p>
	<p>8 a half. Does that sound good to</p>
	<p>9 you guys?</p>
	<p>10 MR. DELAHUNT: Yes. Sure.</p>
	<p>11 Do you want to say 10:35, 10:40?</p>
	<p>12 What do you prefer?</p>
	<p>13 MR. KATZENMEIER: You're</p>
	<p>14 working on Central Time, aren't</p>
	<p>15 you?</p>
	<p>16 MR. DELAHUNT: I am. Sorry.</p>
	<p>17 Yeah. Just adjust it an hour.</p>
	<p>18 MR. KATZENMEIER: Yeah. I</p>
	<p>19 think 11:35 should work for us.</p>
	<p>20 MR. DELAHUNT: Okay. We'll</p>
	<p>21 see you then.</p>
	<p>22 (A short break was had.)</p>
	<p>23 BY MR. KATZENMEIER:</p>
	<p>24 Q. So I'm going to pull up</p>
	<p>25 another document on my screen for you,</p>

1 **Mr. Brownell. Can you see my screen**
 2 **right now?**

3 A. Yes.

4 **Q. And can you read what's on**
 5 **it? I can zoom in if not.**

6 A. No. That's fine. I can
 7 read it.

8 **Q. Okay. Does this look**
 9 **familiar to you?**

10 A. Yes. It looks like a
 11 printout of our claim file notes.

12 **Q. Okay. Yeah. And I'll tell**
 13 **you right now it's not the full claim**
 14 **notes. It's just a brief portion of it.**
 15 These claims notes were authored by David
 16 Hoffman, correct?

17 A. Yes.

18 **Q. That's what it says right**
 19 **here. I'm going to scroll down to this**
 20 **August 18, 2022, entry. And is it**
 21 **correct that that entry entered by David**
 22 **Hoffman says: Info from Airbnb website.**
 23 **See screenshots from Airbnb website saved**
 24 **to file on this date. Reflects Flyway**
 25 **joined as host in July 2018.**

1 **Is that correct?**

2 A. Yes.

3 **Q. And reflects a user review**
 4 **of the subject property dating back to**
 5 **September 2018; is that right?**

6 A. It says that, yes.

7 **Q. Okay. So my question is:**
 8 **What would have prompted Mr. Hoffman to**
 9 **investigate Airbnb's website in**
 10 **connection with this claim note?**

11 A. That likely would have been
 12 his initial conversation with the insured
 13 wherein he was advised that this property
 14 was being used as an Airbnb property at
 15 the time of the loss.

16 **Q. Okay. Going back to the**
 17 **supplemental dwelling application we**
 18 **discussed earlier, are there ever**
 19 **instances where -- as far as you're**
 20 **aware, where Bass has issued policies**
 21 **with short-term rentals involved without**
 22 **referring them to Mt. Hawley?**

23 A. I'm not aware of any such
 24 instances.

25 **Q. Okay. And so if Bass, for**

1 **example, knew that the property was being**
 2 **used as a short-term rental and issued**
 3 **the policy anyway without referring it to**
 4 **Mt. Hawley, what would be Mt. Hawley's, I**
 5 **suppose, process of resolving that**
 6 **dispute with Bass?**

7 MR. DELAHUNT: I'm going to
 8 object to the form. You can
 9 answer, if you can.

10 BY THE WITNESS:

11 A. That would be a clear
 12 violation of the underwriting guidelines
 13 provided by Mt. Hawley to Bass. And
 14 beyond that, I'm unaware of it ever
 15 happening, so I'm not really sure if I
 16 can answer that question as to what the
 17 process would be.

18 **Q. Okay. If there ever were an**
 19 **instance where Bass had issued a policy**
 20 **where a short-term rental was involved**
 21 **and Mt. Hawley had discovered that, would**
 22 **there be a record of that?**

23 MR. DELAHUNT: Same
 24 objection.

25 BY THE WITNESS:

1 A. I'm not sure.

2 **Q. Okay.**

3 A. Again, I'm not aware that
 4 that's ever happened.

5 **Q. If Bass had known that the**
 6 **property owned by Beach Cruiser was being**
 7 **used as a short-term rental and issued**
 8 **the policy anyway without referring the**
 9 **matter to Mt. Hawley, would that still be**
 10 **a basis for denial of coverage based on**
 11 **Mt. Hawley's amended conditions**
 12 **endorsement?**

13 MR. DELAHUNT: Same
 14 objection.

15 BY THE WITNESS:

16 A. It's a hypothetical, so it's
 17 difficult to answer a hypothetical that
 18 didn't actually happen, but it very well
 19 could be.

20 **Q. Okay. Would Mt. Hawley,**
 21 **generally speaking, be entitled to deny**
 22 **coverage based on the amended conditions**
 23 **endorsement in the policy even if the**
 24 **mistake was a typo?**

25 MR. DELAHUNT: Same

1 renewal, correct?
 2 A. Yes.
 3 Q. Okay. Thank you. And I
 4 believe we should mark this as Nationwide
 5 Exhibit G, if I remember my alphabet.
 6 And this follow-up letter,
 7 do you know when the decision to issue a
 8 follow-up letter would have been made?
 9 (Nationwide Deposition Exhibit G
 10 marked for identification.)
 11 BY THE WITNESS:
 12 A. Sometime following receipt
 13 and review of the amended complaint.
 14 Q. Okay. Thank you. Is
 15 Mt. Hawley seeking the recovery of
 16 attorney's fees that are already expended
 17 to defense of the underlying action as
 18 part of its DJ, or declaratory judgment
 19 action? Sorry.
 20 A. I would have to refer you to
 21 the DJ complaint itself.
 22 Q. Okay. Do you know the
 23 extent of attorney's fees or defense
 24 costs incurred by Mt. Hawley to date with
 25 respect to the underlying action?

1 A. I don't.
 2 Q. You don't. Okay. Does
 3 Mt. Hawley have those figures available
 4 anywhere?
 5 A. Yes.
 6 Q. Okay. So going back to the
 7 declaratory judgment complaint we were
 8 just talking about, is it correct that
 9 Mt. Hawley has agreed to dismiss its
 10 revision count in the first amended
 11 declaratory judgment complaint in this
 12 action?
 13 A. It's my understanding that
 14 the revision count was withdrawn, yes.
 15 Q. Okay. Without -- Again
 16 here, I'm not asking for advice of
 17 counsel or anything, just purely
 18 administrative. What was the internal
 19 procedure within Mt. Hawley leading up to
 20 the dismissal of the revision count?
 21 A. That would have been a legal
 22 strategic question addressed by
 23 Mt. Hawley's claim counsel and outside
 24 coverage counsel.
 25 Q. Okay. Who is the individual

1 that would have made the final call as to
 2 whether to dismiss that revision count?
 3 A. Ms. Kanellakes.
 4 Q. That was Dana Kanellakes; is
 5 that correct?
 6 A. Yes.
 7 Q. Okay. I have another letter
 8 here. We'll stop sharing my screen.
 9 Okay. I'm going to share my
 10 screen with you once again, Mr. Brownell.
 11 Can you see my screen?
 12 A. Yes.
 13 Q. Okay. And can you read what
 14 is on my screen right now?
 15 A. Yes.
 16 Q. Okay. And this is a letter
 17 filed in the declaratory judgment action
 18 by your counsel, correct?
 19 A. I don't know if it was filed
 20 or not.
 21 Q. Do you see at the time top
 22 of the screen this blue lettering, blue
 23 text?
 24 A. Yes.
 25 Q. Does that say filed on

1 September 11, 2023?
 2 A. Yes.
 3 Q. Okay. So would it be
 4 reasonable to assume this was filed in
 5 the declaratory judgment action on
 6 September 11, 2023?
 7 A. I honestly don't know if
 8 this was filed or not, but that's what it
 9 appears.
 10 Q. I only have a brief question
 11 on this letter. So this is -- this
 12 letter appears to have been signed by
 13 your counsel; is that correct?
 14 A. Yes.
 15 Q. Okay. And I just want to
 16 draw your attention to this one sentence
 17 here. I can highlight it. Let me know
 18 if you can see my highlighting.
 19 A. I can see it.
 20 Q. Okay. It says: However,
 21 after internally reviewing the matter,
 22 Mt. Hawley agreed to discontinue that
 23 cause of action only.
 24 Is that correct?
 25 A. Yes.

1 **Q. Reading the rest of the**
 2 **paragraph -- and we can take a moment if**
 3 **you need to -- do you understand the**
 4 **reference to that cause of action only**
 5 **within that paragraph to refer to the**
 6 **recision cause of action?**

7 A. That's how I understand it,
 8 yes.

9 **Q. Okay. My specific question**
 10 **here is: The sentence's reference to**
 11 **"after internally reviewing the matter,"**
 12 **was there any document or fact discovered**
 13 **during your internal review that led to**
 14 **the decision to withdraw the recision**
 15 **cause of action?**

16 A. The internal review
 17 referenced in this letter is consultation
 18 between Mr. Delahunt and
 19 Ms. Kanellakes.

20 **Q. So I'm not asking you for**
 21 **anything your counsel told you, but is**
 22 **there any document in Mt. Hawley's**
 23 **possession that led to the decision to**
 24 **withdraw the recision cause of action?**

25 A. I don't have any information

1 regarding the internal review referenced
 2 in this letter other than what I've been
 3 told by counsel.

4 (Nationwide Deposition Exhibit H
 5 marked for identification.)

6 MR. KATZENMEIER: Okay. And
 7 this was filed in the action. We
 8 might as well go ahead and mark
 9 this as Nationwide Exhibit H.

10 Now I might have a bit more
 11 after reviewing stuff, but, Ray,
 12 if you -- do you have anything?

13 MR. PIERANTONI: Yeah. I
 14 have some questions.

15 CROSS-EXAMINATION

16 BY MR. PIERANTONI:

17 **Q. Mr. Brownell, I sort of get**
 18 **confused with the name identification**
 19 **with the photo as well, so I apologize if**
 20 **I call you Mr. Delahunt at some point.**

21 MR. DELAHUNT: We switched
 22 computers because Kevin's wasn't

23 --
 24 MR. PIERANTONI: It's okay.
 25 It's okay. It will be on me, so

1 don't worry about it.

2 Luke, is there any way you
 3 can switch the sharing screen and
 4 give me rights to share as well?
 5 The court reporter can?

6 MR. KATZENMEIER: I believe
 7 the reporter could. I don't think
 8 I'm the host of this. Am I
 9 correct in that, Ms. Kuipers?

10 THE COURT REPORTER: I
 11 believe that the tech that's on is
 12 the host.

13 MR. PIERANTONI: It looks
 14 like I can. Okay. One second.

15 Okay. Did it show up?

16 THE WITNESS: Yes.

17 MR. PIERANTONI: It has.

18 Okay. It showed up for you guys,
 19 but not for me, so ...

20 BY MR. PIERANTONI:

21 **Q. Okay. All right.**

22 **Mr. Brownell, you understand that you're**
 23 **giving your deposition testimony today**
 24 **not individually as a fact witness, but**
 25 **on behalf of the company, Mt. Hawley**

1 **and/or RLI?**

2 A. Yes.

3 **Q. Okay. And you're here to --**
 4 **you're appearing pursuant to this notice**
 5 **of deposition that appears in front of**
 6 **you. Would you like to look at the**
 7 **entire document just to be sure?**

8 A. That appears to be it, yes.

9 **Q. I'll scroll down just to**
 10 **show you the signature at the bottom,**
 11 **okay?**

12 A. Yes.

13 **Q. So who designated you to be**
 14 **the corporate designee for these topics,**
 15 **for the topics listed, 1 through 14 on**
 16 **pages 6 and 7?**

17 A. Claim counsel.

18 **Q. Claim counsel. Okay. And**
 19 **that's Ms. Kanellakes (phonetic)?**

20 A. Kanellakes.

21 **Q. Kanellakes. I'm sorry.**

22 **Why were you designated to**
 23 **testify as to all these topics?**

24 MR. DELAHUNT: Objection,
 25 but you can answer as long as you

1 don't testify to any
2 communications with counsel.
3 BY MR. PIERANTONI:
4 **Q. Absolutely not. I'm not**
5 **asking for any privileged communications.**
6 A. I don't have any independent
7 knowledge as to why I was selected other
8 than what I was told by claim counsel.
9 **Q. Do you understand the**
10 **subject matter areas, 1 through 14, that**
11 **you are testifying about? Do you have**
12 **lack of understanding as to what these**
13 **topics are about?**
14 A. Yes, with the exception that
15 I'm not privy to any communications or
16 discussions that went on between and
17 among counsel in this case as to the
18 scope of those topics and what may or may
19 not have been agreed to or eliminated,
20 but I can see the ones that appear on the
21 screen.
22 **Q. Okay. But you are the**
23 **person that has been designated by**
24 **Mt. Hawley as the person most**
25 **knowledgeable about each of these topics,**

1 **correct?**
2 MR. DELAHUNT: Objection.
3 There's no representation under
4 30(b)(6) that he's most
5 knowledgeable. He's been produced
6 as a 30(b)(6) witness to be
7 reasonably prepared within the
8 federal rules.
9 MR. PIERANTONI: I would
10 dispute that contention.
11 BY MR. PIERANTONI:
12 **Q. Let me ask this --**
13 MR. DELAHUNT: Ray, with all
14 due respect, you can dispute it.
15 If you wanted a 30(b)(1)
16 deposition of the person most
17 knowledgeable, that's how you
18 notice it. That's not how
19 30(b)(6) works.
20 MR. PIERANTONI: I
21 understand how 30(b)(6) works.
22 MR. DELAHUNT: It's not our
23 obligation to provide the most
24 knowledgeable, just a prepared
25 witness.

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1 BY MR. PIERANTONI:
2 **Q. Okay. Is there anyone else**
3 **in Mt. Hawley that's more knowledgeable,**
4 **to your knowledge, about each of these**
5 **topics or any of these topics than you?**
6 A. I'm not sure what that
means.
7 **Q. Sure. Is there anybody that**
8 **you're aware of at Mt. Hawley who is more**
9 **knowledgeable than you about any of these**
10 **topics?**
11 A. It depends on which topic
12 you're talking about. There are various
13 people in this company that have various
14 different roles and have different
15 knowledge levels about different topics.
16 **Q. Okay. Well, we can go**
17 **through each. It's not a long list.**
18 **With regard to the amended**
19 **conditions endorsement that Mt. Hawley is**
20 **relying on in the first amended**
21 **complaint, are you aware of anybody that**
22 **has more knowledge than you about the**
23 **basis for this topic?**
24 A. I have two issues with that

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1 question. One, I don't know what other
2 people's knowledge are. I only know what
3 my knowledge is. And, No. 2, I'm not
4 sure what more knowledge about an
5 endorsement would mean.
6 **Q. Okay. Mr. Eric Wright**
7 **[sic], you remember you mentioned him**
8 **today?**
9 A. Eric White, yes.
10 **Q. Right. And he was a**
11 **signatory to the initial disclaimer**
12 **letter, I believe?**
13 A. Yes.
14 **Q. Do you know if you had**
15 **conversations -- and I'm not asking you**
16 **to divulge because I know counsel was**
17 **present. Do you know, from those**
18 **conversations, if you walked away getting**
19 **the impression that Mr. White was more**
20 **knowledgeable than you about any of these**
21 **topics?**
22 A. No, other than he is the one
23 most familiar with the underwriting
24 process for the product that he oversees.
25 **Q. So he would be more**

1 knowledgeable than you about the
2 underwriting process; is that a fair
3 statement?

4 A. It would really depend on
5 what the question would be.

6 Q. Generally speaking, though,
7 is he more knowledgeable about the
8 underwriting process than you are since
9 your background is in claims?

10 A. I suppose that's true.

11 MR. PIERANTONI: Okay.
12 Luke, do you want to go back in,
13 and then I can follow up later or
14 --

15 MR. KATZENMEIER: You can
16 keep going for now if you want.
17 I've got a couple more, but I'm
18 writing them down.

19 BY MR. PIERANTONI:

20 Q. Okay. Mr. Brownell, how
21 important is it that Bass follow
22 Mt. Hawley's underwriting guidelines?

23 A. I would say it's very
24 important.

25 Q. Is it expected that they're

1 to follow those guidelines strictly?

2 A. Yes.

3 Q. And not deviate from them,
4 right?

5 A. Correct.

6 Q. And you stated that not to
7 your knowledge, you're not aware at least
8 of Bass ever deviating from those
9 guidelines, correct? That's your
10 testimony today?

11 A. Yes.

12 Q. But it doesn't mean that it
13 didn't happen, correct?

14 MR. DELAHUNT: Form.

15 BY THE WITNESS:

16 A. That's true.

17 Q. Okay. Is it possible that
18 Mr. Wright might be aware of an instance
19 where Bass -- Since he's the head of
20 underwriting, is it possible that
21 Mr. Wright is more knowledgeable or might
22 have knowledge as to Bass deviating from
23 those guidelines that you're not aware
24 of?

25 A. It's possible.

1 THE COURT REPORTER: I'm
2 sorry. I didn't hear your
3 objection, if you objected to
4 that.

5 MR. DELAHUNT: Yes. I just
6 said objection.

7 BY MR. PIERANTONI:

8 Q. Earlier today, you were
9 asked about the documents reviewed. Do
10 you remember that, Mr. Brownell?

11 A. Yeah.

12 Q. Okay. And you said that you
13 had generally reviewed the complaint, but
14 not, I guess, fully?

15 A. I didn't read it word for
16 word, but I have seen our declaratory
17 judgment complaint at some point.

18 Q. Okay. Were you able to
19 review the counterclaims filed by my
20 clients? Just for the record, my
21 clients, as you know, are the insureds,
22 Flyway and Beach Cruiser. Were you able
23 to review the counterclaims that were
24 filed against Mt. Hawley?

25 A. No, I have not.

1 Q. Are you aware that the
2 counterclaims -- one of the counterclaims
3 involves the fact that a premium payment
4 was received by Mt. Hawley for renewal of
5 the policy on the 2022, 2023 period?

6 A. The only information I have
7 regarding that topic would be what I've
8 learned from counsel.

9 Q. And are you aware that the
10 allegations -- one of the allegations in
11 the counterclaims is that Mt. Hawley
12 cashed that premium after knowing
13 everything that they needed to know --
14 Well, let's rephrase that.

15 Are you aware that the
16 allegation claims that Mt. Hawley cashed
17 that premium after being made aware of
18 the short-term rentals that existed at
19 the property?

20 MR. DELAHUNT: Objection.
21 BY THE WITNESS:

22 A. I am aware that that is
23 Beach Cruiser's contention, yes.

24 Q. And are you aware if the
25 premium that was charged for the 2202,

1 **2023 period was significantly different**
 2 **than the premium for the previous year?**

3 A. I don't know what the
 4 relative premiums were. I would have to
 5 look at the policy declarations pages to
 6 answer that question.

7 **Q. Okay. You testified earlier**
 8 **that the -- Mr. Hoffman became aware of**
 9 **the short-term rentals at a certain**
 10 **point, correct?**

11 A. Yes.

12 **Q. Do you recall what time**
 13 **period that was -- the earliest time**
 14 **period he became suspicious of the**
 15 **short-term rentals?**

16 MR. DELAHUNT: Objection.

17 BY THE WITNESS:

18 A. I don't believe it was
 19 anything regarding suspicion. I know
 20 that at one -- on an early, if not the
 21 first phone call with the insured that
 22 Mr. Hoffman had, he learned during that
 23 phone call that this property at issue,
 24 at the time of the loss, was being rented
 25 out through Vrbo and Airbnb.

1 **Q. So there's no evidence that**
 2 **you have on behalf of Mt. Hawley -- Since**
 3 **you're testifying on their behalf,**
 4 **there's no evidence that Mt. Hawley has**
 5 **of any nefarious conduct taken by my**
 6 **client to hide the ball from Mt. Hawley**
 7 **on the short-term rentals?**

8 MR. DELAHUNT: Objection.
 9 BY THE WITNESS:

10 A. Other than the
 11 misrepresentation on the supplemental
 12 application, no.

13 **Q. Okay. And in what way was**
 14 **that misrepresentation? Let's focus on**
 15 **the application for a second.**

16 **In what way was the --**
 17 **Specifically, what way was the**
 18 **application misrepresenting anything that**
 19 **led Mt. Hawley to dispute coverage?**

20 A. I would need to see the
 21 verbiage of that particular question on
 22 the supplemental application to fully
 23 answer that question, but, generally, the
 24 insured was asked if the properties for
 25 which they were seeking insurance were

1 being used as short-term rentals, and
 2 they answered no.

3 **MR. PIERANTONI: Luke, is it**
 4 **possible to bring up that**
 5 **application?**

6 **MR. KATZENMEIER: The**
 7 **application for insurance?**

8 **MR. PIERANTONI: Yeah.**

9 **MR. KATZENMEIER: Yeah, I**
 10 **can do that. I believe you will**
 11 **have to stop sharing your screen**
 12 **for me.**

13 BY MR. PIERANTONI:

14 **Q. Okay. Is this the**
 15 **application? And I'm referring -- I know**
 16 **it's a supplemental application, so if I**
 17 **use the terms interchangeably, I'm**
 18 **referring to this document so we're on**
 19 **the same page.**

20 **Is this the application that**
 21 **you're referring to with regard to the**
 22 **answer to the question that represents**
 23 **the misrepresentation in this case?**

24 A. Yes.

25 **Q. Okay. And what question is**

1 **that again?**

2 A. It's part 2 of Question No.

3 .

4 **Q. Right. And if you could**
 5 **read that out loud for the record.**

6 A. "Are any properties rented
 7 by the day or by the week?"

8 **Q. And the answer to that**
 9 **was ...**

10 A. No.

11 **Q. Okay. Now, that's a part 2**
 12 **to the question, correct?**

13 A. Yes.

14 **Q. Part 1 to the question asks**
 15 **what?**

16 A. "What is the average monthly
 17 rent?"

18 **Q. Okay. And did my client**
 19 **answer that question?**

20 A. Through their retail agent,
 21 yes.

22 **Q. Well, the answer is provided**
 23 **in the, application, correct?**

24 A. Correct.

25 **Q. And what is the answer to**

1 what is the average monthly rent?

2 A. For a one-bedroom property,
 3 \$1,000, for a two-bedroom property --
 4 it's a little small, but it looks like
 5 \$1,800. And then for a three-bedroom, it
 6 looks like \$3,000, but the print's a
 7 little small.

8 Q. So is it safe to assume, in
 9 answering that question, that they were
 10 acknowledging that they were renting out
 11 the property on a monthly basis?

12 MR. DELAHUNT: Objection.

13 BY THE WITNESS:

14 A. It indicates that they were
 15 being paid for renting out that property
 16 on a monthly basis.

17 Q. Well, you would agree a
 18 tenant wouldn't pay for the rent of a
 19 property unless it was being rented and
 20 that tenant lived in it, correct?

21 MR. DELAHUNT: Objection.

22 BY THE WITNESS:

23 A. Yes, but you can have a
 24 property that's rented out for two years
 25 with a monthly rent, and you can have a

1 property that's rented for two months
 2 with a monthly rent.

3 Q. So it's not really clear, is
 4 it?

5 MR. DELAHUNT: Objection.
 6 Ray, I'm going to direct him not
 7 to answer a question that that's
 8 argumentative.

9 MR. PIERANTONI: You can't
 10 direct him not to answer a
 11 question. It's a fair question.

12 BY MR. PIERANTONI:

13 Q. So I'll ask it again. Is it
 14 fair to say that this question is not
 15 clear as to whether or not it's a monthly
 16 rental in the course of a long-term lease
 17 or a short-term lease?

18 A. I don't think it's not
 19 unclear because it's a separate question
 20 from the subpart below it.

21 Q. Okay. Well, how do we know
 22 that part A of the question refers only
 23 to long-term rentals? How do we know
 24 that?

25 MR. DELAHUNT: Objection.

1 BY THE WITNESS:

2 A. It doesn't make that
 3 distinction.

4 Q. Right. So it could be for
 5 short-term rentals as well, can't it?

6 MR. DELAHUNT: Objection.

7 BY THE WITNESS:

8 A. You would make the
 9 assumption, based on how this application
 10 is responded to, that it would not be
 11 because they answered no to the question
 12 "are there any properties rented by the
 13 day or by the week."

14 Q. I understand that, but we're
 15 focusing on part A, right? And all I'm
 16 asking you, with regard to part A: Is it
 17 a fair assumption that it may be a
 18 monthly rental for, let's say, a
 19 six-month rental?

20 A. That portion of the question
 21 doesn't reference the length of the
 22 lease. It simply is asking how much
 23 money do the tenants pay per month for
 24 those properties.

25 Q. That's correct. I agree.

1 However, my question is really just
 2 asking: Are you able to tell from that
 3 question that the monthly rent is with
 4 regard to a long-term lease, a six-month
 5 lease, a three-month lease, a nine-month
 6 lease, a five-year lease? Are you able
 7 to tell that from that question?

8 A. From that question, no.

9 Q. Right. And we recall that
 10 the underwriting guidelines from
 11 Mt. Hawley define short-term rentals as
 12 anything under 12 months, correct?

13 A. Yes.

14 Q. Okay. Earlier, you
 15 testified, sir, that you were aware of
 16 Mr. Hoffman's communications on the
 17 claim, but you did not necessarily
 18 discuss with Hoffman anything with regard
 19 to the claim; is that what you testified
 20 to earlier? I just want to make sure
 21 that's clear.

22 A. That's correct. There was a
 23 -- In conjunction with a call that
 24 Mr. Delahunt was participating in, we did
 25 bring in Mr. Hoffman to ask him one

1 specific question, but that's the extent
 2 of any of my communications with him
 3 regarding this claim.

4 **Q. Was that during the meeting**
 5 **that you attended with Mr. Wright on**
 6 **either -- I think you said this past**
 7 **Tuesday or yesterday?**

8 A. No. Mr. White was not on
 9 that call.

10 Q. Okay. Are there any
 11 discussions you had with Mr. Hoffman
 12 regarding the claim that took place
 13 outside the presence of counsel?

14 A. No.

15 Q. And the same question with
 16 regard to Mr. Wright, just to be sure.

17 A. Same answer.

18 Q. Same answer. Thank you.
 19 Does Mt. Hawley consider USI to be an
 20 agent on behalf of my client -- an
 21 insurance agent?

22 A. Yes.

23 Q. Okay. Does Mt. Hawley
 24 consider Bass to be an agent on behalf of
 25 Mt. Hawley?

1 A. That's a legal conclusion
 2 that I can't really speak to, but we do
 3 give Bass the power to issue Mt. Hawley
 4 policies on Mt. Hawley paper within the
 5 underwriting guidelines.

6 Q. Well, in fairness, the
 7 previous question I asked you if USI was
 8 considered an agent. The same question
 9 with two different people, you answered
 10 the first and you claim the second one is
 11 a legal conclusion. So I'm just asking a
 12 simple question. If Bass is treated as
 13 an agent from Mt. Hawley -- you said that
 14 **USI was an agent for my client.**

15 A. Okay. That would also be a
 16 legal conclusion, but to the best of my
 17 knowledge, the answer to both is yes.

18 Q. You testified also earlier
 19 that Mt. Hawley -- and this goes to the
 20 issue of how Bass has to strictly follow
 21 these underwriting guidelines, sir. You
 22 testified earlier that Mt. Hawley relied
 23 upon the underwriting application even
 24 though it's not their own standard
 25 underwriting application. Do you

1 remember that testimony?

2 A. I don't think that's
 3 accurate. I think Bass relied on that
 4 application even though it's not a
 5 Mt. Hawley application, but otherwise,
 6 correct.

7 Q. But Mt. Hawley would have
 8 relied on Bass' reliance on that
 9 application, correct?

10 A. Yes.

11 Q. And would have expected Bass
 12 to follow the underwriting guidelines,
 13 correct?

14 A. Yes.

15 Q. And not deviate from them at
 16 all, right?

17 A. They would not be expected
 18 to deviate from the underwriting
 19 guidelines, correct.

20 Q. How important is it for an
 21 insured to fill out the application for
 22 insurance correctly? How important is
 23 that?

24 A. It's critically important.

25 Q. Okay. Yet the application

1 that was used wasn't a Mt. Hawley
 2 application, correct?

3 A. Correct. This is a common
 4 happening in the insurance industry where
 5 applicants for coverage may use a form
 6 that happened to come from a different
 7 insurer.

8 Q. And the insurer in this case
 9 was RSUI?

10 A. That's what it says there on
 11 the top, yes.

12 Q. Do you know what that
 13 acronym stands for?

14 A. I don't.

15 Q. Okay. So Mt. Hawley relied
 16 on an application for an insurance
 17 company they're not aware of; that's your
 18 testimony?

19 MR. DELAHUNT: Objection.
 20 BY THE WITNESS:

21 A. No, that's not my testimony.

22 Q. Okay. Well, Bass relied on
 23 the application?

24 MR. DELAHUNT: Objection.
 25 BY MR. PIERANTONI:

1 **Q. It's not a Mt. Hawley
2 application, correct?**

3 A. I took issue with the part
4 of the question where you suggested that
5 Mt. Hawley didn't know what RSUI was. I
6 just don't know what the acronym stands
7 for.

8 **Q. Okay. If I asked it another
9 way, what does RSUI stand for, are you
10 able to answer it that way?**

11 A. I know that they are another
12 insurer. I just don't know what the
13 letters RSUI stand for.

14 **Q. Okay. You had testified
15 also that your understanding of the
16 Mt. Hawley underwriting application
17 that's similar to this one -- this
18 supplemental one was worded differently
19 with regard to short-term rentals. Do
20 you recall that testimony?**

21 A. I testified that I have not
22 reviewed that application, so I can't
23 confirm that it is the same as the RSUI
24 application.

25 **Q. Okay. But you did testify**

1 **-- and you can correct me if I'm wrong --
2 that there were differences that you were
3 aware of between the RSUI application and
4 Mt. Hawley's? You just couldn't be
5 specific about it?**

6 A. I don't know what the
7 differences are.

8 **Q. Wasn't your testimony
9 earlier today, with regard to the RSUI
10 application vis-a-vis the Mt. Hawley
11 application, that you know that
12 Mt. Hawley's underwriting application
13 addresses short-term rentals, just not in
14 the same way as RUSI's?**

15 A. Given how important that
16 question -- that issue is to the
17 underwriting process, I'm confident that
18 a question designed to elicit that type
19 of information is in Mt. Hawley's rental
20 dwelling supplemental application. If
21 you're going to ask me any specifics
22 about the wording of that question, I
23 can't answer it without seeing that
24 application.

25 **MR. PIERANTONI:** Okay. I'll

1 ask this question for counsel.
2 Counsel, do you know if that
3 application form was produced in
4 response to discovery in this
5 case, the Mt. Hawley underwriting
6 application form?

7 **MR. DELAHUNT:** It was not
8 produced.

9 **MR. PIERANTONI:** Okay. I
10 want to make a request for that
11 document to be produced, please,
12 in response since it's reasonably
13 calculated to lead to discovery of
14 admissible evidence.

15 **MR. DELAHUNT:** I object to
16 the commentary on what it may lead
17 to. Of course, I'll consider the
18 request for supplemental
19 production. I would ask, just
20 because I may forget, that you
21 follow up sure in writing.

22 **MR. PIERANTONI:** Sure.

23 **MR. DELAHUNT:** Ray, it can
24 be in an e-mail. You know, it can
25 be a formal demand. I don't

1 particularly care. I just don't
2 want to forget.

3 **MR. PIERANTONI:** I just want
4 to have -- I think we should have
5 a copy of that just so we can --
6 Since the witness can't remember
7 or recall or identify the
8 distinctions between the two, I
9 think it might be important in
10 this case. That's all.

11 **MR. DELAHUNT:** We can
12 disagree on that.

13 **MR. PIERANTONI:** I'm sorry?

14 **MR. DELAHUNT:** I don't --
15 Ray, if you say it's important,
16 then you're inviting me to explain
17 why it's not important, and I
18 don't want to do this during a
19 deposition.

20 **MR. PIERANTONI:** Okay. No,
21 we're not. I'm going to make the
22 request.

23 **MR. DELAHUNT:** No -- but
24 you're in front of a witness
25 stating that it's an important

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1 document.
 2 MR. PIERANTONI: It's not my
 3 witness. It's your witness.
 4 MR. DELAHUNT: This is a
 5 deposition.
 6 MR. PIERANTONI: All right.
 7 I'm just clarifying. Your witness
 8 doesn't know what that
 9 underwriting application states,
 10 right?
 11 MR. DELAHUNT: You already
 12 asked him.
 13 MR. PIERANTONI: He's
 14 testified he doesn't know what it
 15 states, and I'm just saying I need
 16 it produced.
 17 MR. DELAHUNT: Again, my
 18 client --
 19 MR. PIERANTONI: If you want
 20 to fight me over it, what he can
 21 testify to, then I'll move on.
 22 BY MR. PIERANTONI:
 23 Q. Let's see. Are you aware of
 24 any communication between Mt. Hawley and
 25 Bass after the date of this application,

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1 which is, I believe, September 2nd, 2020?
 2 Are you aware of any communications
 3 between Bass and Mt. Hawley regarding the
 4 differences between Mt. Hawley's
 5 underwriting application and this RSUI
 6 application form?

7 A. I'm aware of no such
 8 communications.

9 Q. What's the purpose for the
 10 Underwriting Department to know whether a
 11 short-term rental is an Airbnb, Vrbo,
 12 versus some other short-term rental?

13 A. Because Airbnb, Vrbo, and
 14 similar services make a risk ineligible
 15 for a Mt. Hawley policy under the GBA
 16 program.

17 Q. Okay, but short-term rentals
 18 are not ineligible, correct?

19 A. It depends on the facts and
 20 circumstances surrounding that particular
 21 short-term rental.

22 Q. Okay, but were you able to
 23 identify short-term rentals that would be
 24 potentially covered?

25 A. That's too general of a

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1 question for me to answer.
 2 Q. Well, I'm just referring to
 3 the underwriting guidelines that were
 4 discussed earlier.
 5 MR. PIERANTONI: Luke, I
 6 hate to bother you, but if you
 7 could bring up that section of the
 8 underwriting guidelines where they
 9 make the distinction between the
 10 two.
 11 MR. KATZENMEIER: Yeah. So
 12 short-term rentals is up here at
 13 the top and the --
 14 MR. PIERANTONI: Yeah --
 15 MR. KATZENMEIER: -- at the
 16 bottom.
 17 MR. PIERANTONI: Yeah. It's
 18 a few pages later. It's the one
 19 where -- there you go.
 20 BY MR. PIERANTONI:
 21 Q. So you see at the top, the
 22 top section says "submit," right? That's
 23 with regard to the referral process,
 24 right, that Bass would undergo?
 25 A. That's an inexhaustive list

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1 of that, but correct.

2 Q. Right. And under that
 3 referral or submission process,
 4 short-term or vacation rentals is listed,
 5 right?

6 A. Yes.

7 Q. So it's not automatically
 8 deemed ineligible at that point, correct?

9 A. Correct.

10 Q. Okay. The only thing that's
 11 listed as ineligible are Airbnb, Vrbo,
 12 and similar online rental operations,
 13 correct?

14 A. Yes.

15 Q. Okay. But as you sit here
 16 now, you can't testify as to the
 17 difference between short-term or vacation
 18 rentals and Airbnb, Vrbo, and similar
 19 online rental operations?

20 MR. DELAHUNT: Objection.
 21 BY THE WITNESS:

22 A. If coverage is going to be
 23 issued for a short-term or vacation
 24 rental, it would be reviewed by the
 25 Mt. Hawley underwriter depending on the

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1 facts and circumstances, but in no
 2 situation would the policy be issued if
 3 it was Airbnb, Vrbo, or similar online
 4 rental operation.

5 **Q. So is it fair to say that**
 6 **what you're saying is that Airbnb, Vrbo**
 7 **are sort of subsections or subheadings**
 8 **under short-term or vacation rentals; and**
 9 **if a short-term or vacation rental were**
 10 **submitted and it came up Vrbo, no**
 11 **coverage?**

12 A. Correct. We would not issue
 13 a policy in that situation.

14 **Q. And the same thing with**
 15 **Airbnb, right?**

16 A. Yes. Airbnb, Vrbo, and
 17 similar online rental operations.

18 **Q. Right. So similar online**
 19 **rental operations means anybody that's on**
 20 **the Internet that does that, that rents**
 21 **out these properties, correct? Is that**
 22 **what you mean? Is that what Mt. Hawley**
 23 **means?**

24 A. I think that language on the
 25 form that's on the screen speaks for

1 itself, but it refers to Airbnb, Vrbo,
 2 and similar online rental operations.

3 **Q. Okay. Is there any of this**
 4 **-- any explanation of the distinction**
 5 **between short-term or vacation rentals**
 6 **and this subcategory of these other**
 7 **rentals? Is there anything like that in**
 8 **the underwriting application that my**
 9 **client would have seen to understand that**
 10 **distinction?**

11 A. This document is not part of
 12 the underwriting application. These are
 13 part of the guidelines that Bass must
 14 follow in issuing policies for
 15 Mt. Hawley.

16 **Q. I take you at your word, but**
 17 **what I'm asking you, though, is a**
 18 **different question. Is there anything in**
 19 **the underwriting application itself that**
 20 **points out to the insured that Mt. Hawley**
 21 **makes this distinction between short-term**
 22 **rentals -- between the various types of**
 23 **short-term rentals?**

24 A. In this particular case,
 25 only the question that we've been

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1 referring to about rentals by the day or
 2 by the week.

3 **Q. Or references to the monthly**
 4 **average rent, correct?**

5 A. I don't believe that
 6 question is relevant to any of these
 7 issues.

8 **Q. Is it not -- Not to beat a**
 9 **dead horse, but given that's what you**
 10 **just stated, I'm just going to follow up**
 11 **on that.**

12 **You will concede that the**
 13 **underwriting guidelines define short-term**
 14 **rentals as anything less than 12 months,**
 15 **correct?**

16 A. Yes.

17 **Q. I believe you testified that**
 18 **it was as early as, I believe,**
 19 **August 2022 that Mr. Hoffman was aware of**
 20 **the short-term rental. It was after a**
 21 **conversation with someone at -- was it**
 22 **Bass or USI? Can you just clarify that?**

23 A. The claim notes in e-mail
 24 correspondence between Mr. Hoffman and
 25 the insured make that clear, but, yes, I

1 believe that's the time frame.

2 **Q. Around August 2022?**

3 A. Yes.

4 **Q. Is there anyone else at**
 5 **either Bass or Mt. Hawley that would have**
 6 **known earlier in time about the**
 7 **short-term rental period?**

8 A. Not that I'm aware of.

9 MR. PIERANTONI: Okay.
 10 Luke, can you switch this back to
 11 me?

12 MR. KATZENMEIER: Yes.

13 MR. PIERANTONI: Thank you.
 14 BY MR. PIERANTONI:

15 **Q. Okay. Mr. Brownell, are you**
 16 **able to see the document I placed in**
 17 **front of you? It's an e-mail.**

18 A. Yes.

19 **Q. Okay. And can you see my**
 20 **cursor moving around so I can direct your**
 21 **attention?**

22 A. Yes.

23 **Q. So I'll represent that this**
 24 **is a document from Mt. Hawley's**
 25 **production.**

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1 MR. PIERANTONI: What's the
2 next exhibit?

3 THE COURT REPORTER: It's I.
4 (Nationwide Deposition Exhibit I
5 marked for identification.)

6 BY MR. PIERANTONI:

7 Q. And focusing here, this
8 e-mail right here, and it goes over to
9 the next page slightly with the signature
10 block. Do you recognize the e-mail
11 that's been marked as Exhibit I?

12 A. Give me a second to read it.

13 Q. Sure. Would you like me to
14 make it bigger for you?

15 A. No. I don't recall having
16 seen this particular e-mail before.

17 Q. Okay, but you would concede
18 that this is from Mt. Hawley's own
19 production, correct?

20 A. I would defer to
21 Mr. Delahunt.

22 MR. DELAHUNT: Is there a
23 Bates stamp on it?

24 MR. PIERANTONI: Yes. At
25 the bottom, it says MH1305.

1 BY MR. PIERANTONI:

2 Q. All right. So we're on the
3 same page on that. Okay. What do you
4 recognize the e-mail to be, sir?

5 A. This appears to be an e-mail
6 exchange having to do with requesting a
7 policy or a renewal. It's not quite
8 clear from the face of it.

9 Q. Sure. You see that -- I'm
10 going to highlight this right here.
11 That's the wrong policy. Do you see this
12 one here, GGL0026067 in the reference
13 line?

14 A. Yes.

15 Q. Is that the same as the
16 policy number at issue in this case?

17 A. I believe it is.

18 Q. Okay. So, again, does this
19 help clarify what this e-mail is
20 concerning?

21 A. To be entirely sure, I would
22 have to see the broader context, but it
23 appears to be e-mail exchanges during the
24 process of seeking a renewal of a number
25 of policies, actually.

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1 Q. Okay. Including the policy
2 at issue here, right, sir?

3 A. Yes.

4 Q. Okay. And we had discussed
5 earlier USI's role and Bass' role. And
6 there's an exchange between Gray Collier
7 at Bass with Tiffaney Middleton at USI
8 with regard to this matter?

9 A. On one occasion, yes.

10 Q. Was counsel present at the
11 time?

12 A. Yes.

13 Q. Which counsel?

14 A. Mr. Delahunt and
15 Ms. Kanellakes.

16 Q. At all times? There was no
17 other discussion with him?

18 A. Correct. I've never spoken
19 to him outside of that conversation with
20 those people present.

21 Q. Can you just read the --
22 let's see -- fourth sentence that begins
23 with: Can you tell me information?

24 Can you read that sentence
25 out loud that's written by Ms. Middleton

1 to Gray Collier?

2 A. Sure. It says: Can you
3 tell me information I would need to
4 provide her with a quote for a property
5 short-term rentals? I assume much like
6 they have. Total construction costs are
7 estimated to \$1,032,500.

8 Q. Okay. Do you know who the
9 "she" is that's being referred to?

10 A. No.

11 Q. Is it fair to say -- would
12 you be surprised to say the "she" is the
13 representative from the insured asking
14 the question about coverage?

15 A. That's possible.

16 Q. Okay. And Mr. Collier is
17 being informed about the property being a
18 short-term rental in this e-mail,
19 correct? At least the property -- I take
20 that back.

21 That the property listed --
22 at least the properties with regard to
23 the insurance policies listed in the
24 subject line are subject to short-term
25 rentals, correct?

1 A. Actually, the e-mail refers
2 to a quote for a property, short-term
3 rentals. And the e-mail body itself
4 doesn't specify which property that
5 that's referring to.

6 **Q. Right. But the subject line**
7 **does refer to the policy at issue in this**
8 **case, right?**

9 A. No. The subject line has RE
10 colon in front of it, so, apparently, the
11 same subject line has been used in
12 multiple replies back and forth.

13 **Q. Okay. That was never**
14 **changed, was it?**

15 A. No.

16 **Q. Okay. Would this change**
17 **your testimony as to when Mt. Hawley was**
18 **aware, whether on its own or through**
19 **Bass, of the short-term rentals?**

20 MR. DELAHUNT: Objection.
21 BY THE WITNESS:
22 A. The discussion we've had
23 previously about Mt. Hawley being aware
24 was in reference to when Mt. Hawley was
25 aware that it was a Vrbo or Airbnb or

1 similar property. That's a different
2 issue than it being a short-term rental.

3 **Q. Okay. Your testimony today**
4 **was that -- I mean, clearly it's**
5 **important because you're making a claim**
6 **to disclaim coverage. If Mt. Hawley**
7 **learned of the possibility of the**
8 **property being a short-term rental, it**
9 **would either have to be deemed ineligible**
10 **for coverage or referred, right? That**
11 **was your testimony today, that Bass would**
12 **have to refer -- I'll rephrase the**
13 **question.**

14 **Bass would have to refer any**
15 **short-term rental to Mt. Hawley under the**
16 **underwriting guidelines, correct?**

17 A. That's what they're supposed
18 to do, correct.

19 **Q. Those guidelines are**
20 **supposed to be strictly followed,**
21 **correct?**

22 A. They're supposed to be.

23 **Q. Right. What I'm asking you**
24 **now is: On February 2nd, 2022, which is**
25 **the date of this e-mail, are you aware of**

1 **Bass informing Mt. Hawley of the**
2 **possibility of there being short-term**
3 **rentals for property covered under that**
4 **policy, under the policy at issue?**

5 MR. DELAHUNT: Objection.
6 BY THE WITNESS:

7 A. I can't say that that
8 e-mail's reference to short-term rentals
9 refers to the properties at issue in the
10 underlying suit.

11 **Q. Okay. But we established**
12 **that the subject line, even though it's**
13 **been followed up from maybe previous**
14 **e-mails, still contains the policy number**
15 **in it, correct?**

16 A. Yes, but that doesn't
17 logically mean that the reference to
18 short-term rentals in the body of that
19 e-mail is referring to the property that
20 was the subject of GGL0026060.

21 **Q. Right. It doesn't mean, but**
22 **it could mean, correct?**

23 MR. DELAHUNT: Objection.

24 BY THE WITNESS:

25 A. That would be speculation.

1 **Q. So it's not one thing to**
2 **speculate that it doesn't mean, but it's**
3 **not something to speculate that it could**
4 **mean?**

5 MR. DELAHUNT: Objection.
6 BY THE WITNESS:

7 A. I didn't say it doesn't
8 mean. I said I can't make that
9 connection based on what's here in this
10 e-mail.

11 **Q. So it's possible that it**
12 **does refer to the property that's the**
13 **subject of this claim, right?**

14 A. It's possible, but I would
15 say unlikely.

16 **Q. Why would you say that?**

17 A. Because if it were, then
18 Bass would have referred that in to us.

19 **Q. I see. So it's impossible**
20 **for Bass to have ever made a mistake?**

21 MR. DELAHUNT: Objection.
22 BY THE WITNESS:

23 A. Impossible, no. We're all
24 human beings.

25 **Q. Okay. With regard to -- I**

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1 mean, with regard to the importance
 2 that's attached to the short-term
 3 rentals, given it's the major issue here
 4 in this case, that it was a Vrbo or
 5 Airbnb as a subset and that coverage is
 6 ineligible for that, but it may be
 7 eligible for a different type of
 8 short-term rental, right, where is there
 9 -- are you aware -- Let me rephrase it.

10 Are you aware of any efforts
 11 by Mr. Collier or Mt. Hawley to look
 12 further into the possibility that this
 13 short-term rental may have been an Airbnb
 14 or Vrbo?

15 A. I don't even know if
 16 Mr. Collier knew that the property at
 17 issue was a short-term rental.

18 Q. Right. But he clearly was
 19 aware of short-term rentals at, possibly,
 20 the property that's at issue in this case
 21 on February 2nd, 2022, correct?

22 MR. DELAHUNT: Objection.

23 BY THE WITNESS:

24 A. It's also possible that this
 25 reference to short-term rentals in this

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1 e-mail on the screen refers to a
 2 completely different property for which
 3 coverage was never issued.

4 Q. Could be. That's right.

5 MR. DELAHUNT: You're
 6 testifying in these questions, and
 7 I'm going to start doing likewise.
 8 Okay? Please.

9 MR. PIERANTONI: I'm going
 10 to ask you to stop coaching the
 11 witness and let me ask my
 12 questions.

13 MR. DELAHUNT: I didn't
 14 coach the witness, Ray. You're
 15 testifying in your questions.

16 MR. PIERANTONI: I'm not
 17 testifying. I'm asking for
 18 clarity. That's all I'm doing.

19 BY MR. PIERANTONI:

20 Q. So, Mr. Brownell, you would
 21 concede that it's possible that the
 22 subject property at issue in this
 23 litigation is the property that's
 24 referenced here in this e-mail? Is it
 25 possible?

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1 A. Lots of things are possible.
 2 It is possible, but I would say unlikely.

3 Q. Okay. Given that it is
 4 possible, okay, would it be -- would Gray
 5 Collier or anybody at Bass or anybody at
 6 Mt. Hawley be concerned and look into
 7 that situation further if they had a red
 8 flag on a short-term rental?

9 MR. DELAHUNT: Objection.

10 BY THE WITNESS:

11 A. Only if coverage were
 12 actually pursued for whatever short-term
 13 rental this e-mail refers to.

14 Q. Okay. And if it wasn't
 15 pursued, then somebody dropped the ball,
 16 correct?

17 MR. DELAHUNT: Objection.

18 BY THE WITNESS:

19 A. Or the insured decided not
 20 to pursue coverage for that particular
 21 property with Bass or with Mt. Hawley.

22 Q. Well, we know that
 23 short-term rental coverage was issued,
 24 right, because Mt. Hawley renewed the
 25 policy for the following year and

1 accepted the premium payment when they
 2 already knew that there were short-term
 3 rentals occurring at the property, right?

4 MR. DELAHUNT: Objection.

5 BY THE WITNESS:

6 A. I'm not sure where you're
 7 getting the basis for that question.

8 Q. What I'm saying is that we
 9 know that Mt. Hawley renewed the 2022 to
 10 2023 policy knowing already there were
 11 short-term rentals at the property in
 12 question in this litigation?

13 MR. DELAHUNT: Objection.

14 BY THE WITNESS:

15 A. I have not reviewed the
 16 underwriting file for the '22, '23
 17 policy.

18 Q. Well, wasn't that one of the
 19 topics that you're here to testify about?
 20 I think it was Topic 1 or 2. Do you want
 21 to go over that again?

22 MR. DELAHUNT: Yeah, we can.

23 BY MR. PIERANTONI:

24 Q. Yeah. Okay. Do you see
 25 topic No. 2, sir?

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1 A. There's no reference to the
2 '22, '23 policy in that No. 2.

3 Q. I wasn't asking about that.
4 I was just asking -- you mentioned
5 underwriting, that you're not here to
6 talk about the underwriting guidelines --
7 or the underwriting process for the
8 renewal policy, right?

9 MR. DELAHUNT: Objection.
10 He said he did not read the 2022
11 underwriting file.

12 MR. PIERANTONI: Okay.

13 MR. DELAHUNT: Ray, if you
14 don't mind, find the definition of
15 the Mt. Hawley policy in the
16 notice.

17 MR. PIERANTONI: Just give
18 me a second.

19 BY MR. PIERANTONI:

20 Q. Do you see Topic No. 7?

21 A. Yes.

22 Q. Any incorrect, false,
23 inaccurate, or incomplete information
24 contained in any application for
25 insurance provided by Beach Cruiser to

1 Mt. Hawley or to any other entity on
2 behalf of Mt. Hawley. Do you understand
3 that subject?

4 A. Yes.

5 Q. Okay. So what I'm asking
6 you is: When the renewal came up for the
7 policy at issue in this case, was there
8 an acceptance of the premium payment for
9 that renewal?

10 A. As I said, I have not
11 reviewed the underwriting file for that
12 particular renewal, but it's my
13 understanding that yes.

14 Q. Okay. And the renewal was
15 accepted and put into place and the new
16 policy was issued for the 2022, 2023
17 period after Mt. Hawley was made aware of
18 the short-term rentals taking place at
19 the property that's the subject of the
20 same policy, correct?

21 A. Except I don't know what
22 supplemental or different applications or
23 information are part of that second
24 renewal's underwriting file, so I can't
25 comment on what information was or wasn't

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1 considered for the renewal.

2 Q. Right. So even though this
3 topic says you're here to testify, at
4 least reasonably prepared to testify with
5 regard to applications for insurance,
6 you're not here to testify as to the
7 application for insurance under renewal?

8 A. I'm here to discuss any
9 incorrect, false, inaccurate, or
10 incomplete information contained in any
11 application. And the incorrect, false,
12 inaccurate, or incomplete information I
13 have knowledge of and I'm testifying
14 about is the supplemental application
15 dated September of 2020.

16 Q. Okay. Are you aware of any
17 incorrect, false, inaccurate, or
18 incomplete information with regard to the
19 renewal?

20 A. Which renewal?

21 Q. The 2022 to 2023 renewal of
22 the policy.

23 A. I can't answer that question
24 because I haven't reviewed the
25 underwriting file for that policy.

1 Q. Right. Even though the
2 question clearly asks for a witness to be
3 reasonably informed to testify about
4 that, correct?

5 MR. DELAHUNT: Objection.
6 BY THE WITNESS:

7 A. I don't think you're reading
8 No. 7 the right way.

9 Q. We differ then. Let me just
10 see here.

11 MR. PIERANTONI: You wanted
12 to look, Tim, at the definition of
13 a policy?

14 MR. DELAHUNT: Yeah.

15 MR. PIERANTONI: Okay. It
16 says the '21 to '22 policy. I
17 don't dispute that, but that's not
18 my question.

19 BY MR. PIERANTONI:

20 Q. Is the renewal process for
21 this Mt. Hawley policy, for the 2022 to
22 2023 renewal, is that renewal process
23 considered part of the underwriting
24 process?

25 A. Yes.

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1 Q. Okay. And topic 2 says:
 2 Mt. Hawley's underwriting guidelines
 3 applicable to the Mt. Hawley policy,
 4 including any guideline for issuance of a
 5 policy for the owner of a policy used for
 6 short-term rentals.

7 Do you see that, sir?

8 A. Yes.

9 Q. You're not able to testify
 10 as to the underwriting process for the
 11 renewal; is that correct?

12 MR. DELAHUNT: Objection.

13 MR. PIERANTONI: Maybe it's
 14 a twitch, but I am a little
 15 concerned about the witness
 16 looking over to you before he
 17 gives an answer.

18 THE WITNESS: Because I have
 19 to know when he's done with his
 20 objection before I can speak.

21 MR. PIERANTONI: Fair
 22 enough. Thank you. I just wanted
 23 to make sure because it won't look
 24 good on the video. That's why.
 25 Thank you for clarifying.

1 BY MR. PIERANTONI:
 2 Q. So you're not here to
 3 testify as to the underwriting process
 4 for the renewal, correct?

5 A. The processes for the
 6 renewal are the same from policy to
 7 policy. Specifically how the second
 8 renewal was underwritten or what
 9 information was provided or considered,
 10 no, I have not reviewed that underwriting
 11 file.

12 MR. PIERANTONI: Okay. I'm
 13 finishing up here soon.

14 Luke, are you still going to
 15 ask that question or do you want
 16 me to ask the question?

17 MR. KATZENMEIER: You can
 18 ask that question if you want.
 19 I've got a couple more once you're
 20 done.

21 BY MR. PIERANTONI:

22 Q. Just to be clear, I produced
 23 documents during our last break to
 24 counsel. They were documents that were
 25 shared with regard to the back-and-forth,

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1 but it was with regard to requesting that
 2 Mt. Hawley withdraw its statutory
 3 revision claim. And in the course of the
 4 earlier testimony today, I discovered
 5 that these three documents were not
 6 produced even though the parties -- at
 7 least counsel was aware, so I just wanted
 8 to show you because I wanted to pinpoint
 9 the date that the premium was paid. Just
 10 give me a second here.

11 Okay, sir. Is this big
 12 enough for you to see?

13 A. Yes.

14 (Nationwide Deposition Exhibit J
 15 marked for identification.)

16 BY MR. PIERANTONI:

17 Q. All right. Can you identify
 18 the document marked as Exhibit J? By the
 19 way -- I'm sorry. Before we do that, I'm
 20 going to enter Exhibit I that was marked
 21 before. So if we could mark this as
 22 Exhibit J.

23 Can you look at the document
 24 and then explain to me what that document
 25 is?

1 A. I haven't seen this document
 2 before, so the document just has to refer
 3 to itself.

4 Q. Okay. Have you ever seen a
 5 document like this?

6 A. I'm not sure what you mean.

7 Q. Well, what is the document
 8 to you? I'm not asking you to -- Just
 9 what is the document to you?

10 A. Generally, it appears to be
 11 some kind of invoice.

12 Q. Okay. And the invoice is
 13 from who?

14 A. It's on Bass Underwriters'
 15 letterhead.

16 Q. Okay. And it's issued to
 17 which insured?

18 A. Beach Cruiser, LLC, 40 Ounce
 19 Highway, LLC.

20 Q. Okay. Do you see the
 21 invoice date?

22 A. Yes. It looks like
 23 September 8, 2022.

24 Q. Okay. And the renewal
 25 policy number is GGL0031463. Do you see

1 that?

2 A. Yes.

3 Q. Okay. The next page --
4 let's see if I can get to the next page.
5 The next page is a receipt for payment of
6 the invoice that was referred to earlier.
7 Would you dispute that?

8 A. That's what it appears to
9 be.

10 Q. Okay. So if I can have this
11 entered as Exhibit I.

12 Do you have any reason to
13 doubt this is the invoice for the policy
14 renewal for the 2022, 2023 period?

15 A. As I've never seen this
16 before, no.

17 Q. Okay. So the date upon
18 which the invoice was remitted and paid
19 was on or about September 8th, 2022. I
20 think the actual payment date was
21 September 28th, as reflected here. Do
22 you see that?

23 A. Yes, that's what those
24 documents said.

25 Q. And, by that time,

1 Mt. Hawley was already aware of the
2 short-term rental situation at the
3 property that's the subject of this
4 litigation, correct?

5 A. Yes.

6 Q. Okay. Give me a second.

7 A. I don't know what the terms
8 of that renewal policy are. I would have
9 to look at the policy.

10 Q. Okay. Sir, are you aware --
11 The position taken by Mt. Hawley is that
12 New York law applies to this matter. We
13 had that discussion earlier. You
14 testified to that earlier, correct?

15 A. Yeah. I would defer to the
16 language of the service of suit
17 endorsement that we spoke about earlier,
18 but yes.

19 Q. Are you aware of the law in
20 New York stating that a declaratory
21 judgment action filed by an insurer
22 should -- should there be a decision that
23 coverage is in fact in place, that
24 defense costs would also include the
25 costs of my client defending against the

1 DJ action?

2 MR. DELAHUNT: Objection.
3 BY THE WITNESS:

4 A. That's a legal issue within
5 the confines of the declaratory judgment
6 action, and I would defer to outside
7 coverage counsel, who is experienced in
8 New York law.

9 Q. Okay. So you're not aware
10 of that. I'm just asking if you're
11 aware.

12 A. I'm not aware one way or the
13 other.

14 Q. Okay. Do you know what that
15 means, what I just said?

16 A. Yes.

17 MR. PIERANTONI: Okay.

18 Thank you. I don't think -- I'm
19 just going to reserve maybe a
20 couple questions at the end
21 depending on what happens, but it
22 won't be long. Luke, if you want
23 to go ahead and step in.

24 MR. KATZENMEIER: Yeah. I
25 just have a few more.

1 REDIRECT EXAMINATION
2 BY MR. KATZENMEIER:

3 Q. Mr. Brownell, we talked
4 about the underwriting guidelines earlier
5 and correct me if I'm wrong, but you said
6 it was, more or less, standard that
7 properties listed on Airbnb, Vrbo, et
8 cetera were considered ineligible risks
9 in these types of policies?

10 A. I think you're referring to
11 the testimony where I was talking about
12 the industry in general?

13 Q. Yes, with respect to this
14 question.

15 A. It is my general
16 understanding that most insurers would
17 not have an appetite to insure risks that
18 are Airbnb, Vrbo, or similar properties.

19 Q. Okay. And, certainly, you
20 would agree that on the underwriting
21 guidelines we looked at earlier -- I can
22 pull them up if needed -- that Airbnb,
23 Vrbo, and similar rental options are
24 listed as ineligible risks; is that
25 correct?

1 A. Yes.

2 Q. **Have those underwriting**
 3 **guidelines -- as far as you're aware,**
 4 **have they been updated within the past**
 5 **two years, say?**

6 A. Not the provisions related
 7 to the Vrbo, no.

8 Q. **So even if there was an**
 9 **updated version of the underwriting**
 10 **guidelines, the ineligible risk section**
 11 **would still display that Airbnb, Vrbo, or**
 12 **similar rental options are ineligible**
 13 **risks?**

14 A. Yes. Airbnb, Vrbo, and
 15 similar operations have been ineligible
 16 since this product began and continue to
 17 be so through the present day.

18 Q. **And, presumably, that would**
 19 **be the case at the same time the 2022 to**
 20 **2023 renewal was issued, correct?**

21 A. Yes.

22 MR. KATZENMEIER: Okay.
 23 Ray, if you could pull up
 24 Exhibit I for me again. I believe
 25 it was the communications between

1 Bass Underwriters and USI.

2 MR. PIERANTONI: Sorry. It
 3 helps to unmute yourself. What's
 4 the document again, Luke?

5 MR. KATZENMEIER: Exhibit I.
 6 It should be the February 2022
 7 correspondence between Bass and
 8 USI. I have a copy as well. I
 9 just wanted to make sure the copy
 10 we're using is consistent.

11 MR. PIERANTONI: Give me a
 12 second here. I have to sort of
 13 move it a little. Sorry about the
 14 movement on the screen, gentlemen.

15 BY MR. KATZENMEIER:

16 Q. **It's this right here. And I**
 17 **want to scroll in particular to these**
 18 **policy numbers that are in the subject**
 19 **line. Can you see those?**

20 A. Yes.

21 Q. **Can you read any of those?**

22 A. I can read all of them.

23 Q. **Okay. Do you recognize any**
 24 **of those policy numbers as policies**
 25 **issued by Mt. Hawley to Beach Cruiser?**

1 A. Yes, the one with the GGL
 2 prefix.

3 Q. **Okay. Are either -- or any**
 4 **of the other policies policies issued by**
 5 **Mt. Hawley to Beach Cruiser?**

6 A. I don't think so. I don't
 7 recognize the format of those policy
 8 numbers.

9 Q. **Okay. And aside from that**
 10 **GGL policy number, are you aware of any**
 11 **other policies issued by Mt. Hawley to**
 12 **Beach Cruiser?**

13 A. No, other than the previous
 14 year's policy and the subsequent year's
 15 policy.

16 Q. **Sure. Is it possible that**
 17 **Mt. Hawley has issued insurance policies**
 18 **to Beach Cruiser for a different**
 19 **property, for example?**

20 A. I suppose it could be
 21 possible, but I have no information that
 22 that was ever done.

23 Q. **Okay. If Mt. Hawley had**
 24 **issued other policies to Beach Cruiser**
 25 **for a different property, for example,**

1 would discovering that the property
 2 insured under this policy was listed on
 3 Airbnb, Vrbo have prompted Mt. Hawley to
 4 check in on the other properties or
 5 verify whether they were being used on
 6 Airbnb or Vrbo?

7 MR. DELAHUNT: Objection to
 8 form.

9 BY THE WITNESS:

10 A. I don't think so.

11 Q. **You don't think so? Why**
 12 **would Mt. Hawley not have checked on the**
 13 **usage of other properties?**

14 MR. DELAHUNT: Objection.

15 BY THE WITNESS:

16 A. They would have -- the
 17 underwriters would have relied on the
 18 application information submitted in
 19 connection with the request for insurance
 20 for those properties.

21 Q. **And that's the case even**
 22 **after the application in this would have**
 23 **been, in that scenario, demonstratively**
 24 **incorrect?**

25 MR. DELAHUNT: Objection.

1 BY THE WITNESS:

2 A. I'm not aware of a procedure
3 by which other hypothetical properties
4 for which an insured is seeking coverage
5 would be investigated in a different way
6 because of an issue with another policy,
7 if that's what you're asking.

8 MR. KATZENMEIER: Okay. Let
9 me see if I have anything else. I
10 think that's all I have for you.

11 Do you have anything else, Ray?

12 MR. PIERANTONI: I just have
13 a couple of quick follow-up
14 questions specifically with regard
15 to the endorsement, and then I'm
16 done, okay?

17 Luke, would you mind
18 bringing up the endorsement?

19 MR. KATZENMEIER: The
20 amended conditions endorsement?

21 MR. PIERANTONI: Yeah. And
22 thank you, Mr. Brownell. I know
23 we're going through lunch here,
24 but I promise it will be short.

25 THE WITNESS: It's only noon

1 here.

2 MR. PIERANTONI: My stomach
3 is churning right now.

4 RECROSS-EXAMINATION

5 BY MR. PIERANTONI:

6 Q. Great. Okay, Mr. Brownell.
7 You recall your testimony earlier today
8 about this endorsement?

9 A. Generally, yes.

10 Q. Okay. Let's focus on
11 Section 4A, okay? And I'm going to ask
12 you to read the last two sentences of
13 that. Is that okay? Can you read it out
14 loud for the record?

15 A. Yes. For purposes of this
16 endorsement, the application(s) includes,
17 without limitation, any application forms
18 and any other forms, documents, or
19 information submitted to us in connection
20 with or relating to issuance of this
21 policy.

22 For purposes of this
23 endorsement, the application(s) is a part
24 of this policy and is incorporated
25 herein.

1 And the two instances where
2 I said the word "applications" the S is
3 in parentheticals.

4 Q. Right. So is it fair to say
5 that this part of the form sort of
6 defines the term "application" as being
7 not just the application at issue?

8 A. Yes. It's including all
9 other information provided by the insured
10 in the application process.

11 Q. Well, does it say -- Does it
12 say it has to be provided by the insured,
13 or does it just say submitted to
14 Mt. Hawley generally?

15 A. The latter.

16 Q. Okay. And the documents
17 that's referred to in that sentence could
18 be e-mails, correct?

19 A. It could.

20 MR. PIERANTONI: Okay.
21 Thank you. I have no further
22 questions. Thank you so much for
23 your time. I appreciate it.

24 Thank you, Tim.

25 MR. DELAHUNT: All right.

1 Thanks, Ray and Luke. And I don't
2 have any questions.

3 (Witness excused, 1:03.)

4 THE COURT REPORTER: You
5 still want the transcript
6 expedited for Monday, right?

7 MR. PIERANTONI: Yeah. I
8 just need it Monday or Tuesday,
9 would be helpful.

10 MR. KATZENMEIER: I believe
11 we should do the same, yeah.

12 THE COURT REPORTER: Tim, do
13 you want a copy?

14 MR. DELAHUNT: I think I'm
15 entitled to it. It's my witness.

16 MR. PIERANTONI: We're
17 talking about if you want it
18 expedited, Tim.

19 MR. DELAHUNT: I already
20 lived through it. I don't need it
21 expedited.

22 Listen, I don't want to pay
23 for my witness' transcript. You
24 are obligated to produce a copy.

25 MR. PIERANTONI: If you want

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1 to expedite one and not the other,
 2 and we'll split the costs for
 3 that, I'm fine with that.
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 3 SOUTHERN DISTRICT OF NEW YORK)
 4) SS
 5 STATE OF ILLINOIS)
 6 COUNTY OF COOK)
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I, Alyssa N. Kuipers,
 Certified Shorthand Reporter, Registered
 Professional Reporter, do hereby certify
 that MT. HAWLEY INSURANCE COMPANY was
 first duly sworn by me to testify to the
 whole truth and that the above deposition
 was reported stenographically via Zoom by
 me and reduced to typewriting under my
 personal direction.

I further certify that the
 said deposition was taken at the time
 specified and that the taking of said
 deposition commenced on the 15th day of
 December, 2023.

I further certify that I am
 not a relative or employee or attorney or
 counsel of any of the parties, nor a
 relative or employee of such attorney or
 counsel, nor financially interested
 directly or indirectly in this action.

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1 Witness my official
 2 signature on this 19th day of December
 3 2023.
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ALYSSA N. KUIPERS, CSR, RPR

CSR No. 084-004857

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